

104TH CONGRESS
1ST SESSION

H. R. 1670

[Report No. 104-222, Part I]

To revise and streamline the acquisition laws of the Federal Government, to reorganize the mechanisms for resolving Federal procurement disputes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1995

Mr. CLINGER (for himself, Mr. SPENCE, Mr. HORN, Mr. ZELIFF, Mr. BLUTE, Mr. DAVIS, Mr. SCARBOROUGH, Mr. LEWIS of Kentucky, Mr. TATE, Mr. TIAHRT, Mr. FLANAGAN, Mr. BASS, and Mr. CHAMBLISS) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committees on National Security and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

AUGUST 1, 1995

Additional sponsors: Mr. WATTS of Oklahoma, Mr. McKEON, Mr. MORAN, and Mr. FOX of Pennsylvania

AUGUST 1, 1995

Reported from the Committee on Government Reform and Oversight with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

AUGUST 1, 1995

Referral to the Committees on National Security and the Judiciary extended for a period ending not later than August 2, 1995

AUGUST 2, 1995

Referral to the Committees on National Security and the Judiciary extended for a period ending not later than October 2, 1995

[For text of introduced bill, see copy of bill as introduced on May 18, 1995]

A BILL

To revise and streamline the acquisition laws of the Federal Government, to reorganize the mechanisms for resolving Federal procurement disputes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Federal Acquisition*
5 *Reform Act of 1995”.*

6 **SEC. 2. TABLE OF CONTENTS.**

7 *The table of contents for this Act is as follows:*

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—COMPETITION

Sec. 101. Improvement of competition requirements.

Sec. 102. Definitions relating to competition requirements.

Sec. 103. Contract solicitation amendments.

Sec. 104. Preaward debriefings.

Sec. 105. Contract types.

Sec. 106. Contractor performance.

TITLE II—COMMERCIAL ITEMS

Sec. 201. Commercial item exception to requirement for cost or pricing data and information limitations.

Sec. 202. Application of simplified procedures to commercial items.

Sec. 203. Amendment to definition of commercial items.

Sec. 204. Inapplicability of cost accounting standards to contracts and sub-contracts for commercial items.

TITLE III—ADDITIONAL REFORM PROVISIONS

Sec. 301. Government reliance on the private sector.

Sec. 302. Elimination of certain certification requirements.

Sec. 303. Amendment to commencement and expiration of authority to conduct certain tests of procurement procedures.

Sec. 304. International competitiveness.

Sec. 305. Procurement integrity.

Sec. 306. Further acquisition streamlining provisions.

Sec. 307. Justification of major defense acquisition programs not meeting goals.

Sec. 308. Enhanced performance incentives for acquisition workforce.

Sec. 309. Results oriented acquisition program cycle.

- Sec. 310. Rapid contracting goal.*
- Sec. 311. Encouragement of multiyear contracting.*
- Sec. 312. Contractor share of gains and losses from cost, schedule, and performance experience.*
- Sec. 313. Phase funding of defense acquisition programs.*
- Sec. 314. Improved Department of Defense contract payment procedures.*
- Sec. 315. Consideration of past performance in assignment to acquisition positions.*
- Sec. 316. Additional Department of Defense pilot programs.*
- Sec. 317. Value engineering for Federal agencies.*
- Sec. 318. Acquisition workforce.*

TITLE IV—STREAMLINING OF DISPUTE RESOLUTION

Subtitle A—General Provisions

- Sec. 401. Definitions.*

Subtitle B—Establishment of Civilian and Defense Boards of Contract Appeals

- Sec. 411. Establishment.*
- Sec. 412. Membership.*
- Sec. 413. Chairman.*
- Sec. 414. Rulemaking authority.*
- Sec. 415. Authorization of appropriations.*

Subtitle C—Functions of Defense and Civilian Boards of Contract Appeals

- Sec. 421. Alternative dispute resolution services.*
- Sec. 422. Alternative dispute resolution of disputes and protests submitted to boards*
- Sec. 423. Contract disputes.*
- Sec. 424. Protests.*
- Sec. 425. Applicability to certain contracts.*

Subtitle D—Repeal of Other Statutes Authorizing Administrative Protests

- Sec. 431. Repeals.*

Subtitle E—Transfers and Transitional, Savings, and Conforming Provisions

- Sec. 441. Transfer and allocation of appropriations and personnel.*
- Sec. 442. Terminations and savings provisions.*
- Sec. 443. Contract disputes authority of boards.*
- Sec. 444. References to agency boards of contract appeals.*
- Sec. 445. Conforming amendments.*

Subtitle F—Effective Date; Interim Appointment and Rules

- Sec. 451. Effective date.*
- Sec. 452. Interim appointment.*
- Sec. 453. Interim rules.*

TITLE V—EFFECTIVE DATES AND IMPLEMENTATION

- Sec. 501. Effective date and applicability.*
- Sec. 502. Implementing regulations.*

TITLE I—COMPETITION

SEC. 101. IMPROVEMENT OF COMPETITION REQUIREMENTS.

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2304 of title 10, United States Code, is amended to read as follows:

“§ 2304. Contracts: competition requirements

“(a) COMPETITION.—(1) Except as provided in subsections (b), (c), and (e) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

“(A) shall obtain full and open competition—

“(i) that provides open access, and

“(ii) that is consistent with the need to efficiently fulfill the Government’s requirements,

through the use of competitive procedures in accordance with this chapter and the Federal Acquisition Regulation; and

“(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

“(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

“(A) shall solicit sealed bids if—

1 “(i) time permits the solicitation, submis-
2 sion, and evaluation of sealed bids;

3 “(ii) the award will be made on the basis
4 of price and other price-related factors;

5 “(iii) it is not necessary to conduct discus-
6 sions with the responding sources about their
7 bids; and

8 “(iv) there is a reasonable expectation of re-
9 ceiving more than one sealed bid; and

10 “(B) shall request competitive proposals if sealed
11 bids are not appropriate under clause (A).

12 “(b) *EXCLUSION OF PARTICULAR SOURCE.*—The head
13 of an agency may provide for the procurement of property
14 or services covered by this chapter using competitive proce-
15 dures but excluding a particular source in order to establish
16 or maintain an alternative source or sources of supply for
17 that property or service. The Federal Acquisition Regula-
18 tion shall set forth the circumstances under which a par-
19 ticular source may be excluded pursuant to this subsection.

20 “(c) *EXCLUSION OF CONCERNS OTHER THAN SMALL*
21 *BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.*—
22 The head of an agency may provide for the procurement
23 of property or services covered by this section using com-
24 petitive procedures, but excluding concerns other than small
25 business concerns in furtherance of sections 9 and 15 of the

1 *Small Business Act (15 U.S.C. 638, 644) and concerns other*
2 *than small business concerns, historically Black colleges and*
3 *universities, and minority institutions in furtherance of*
4 *section 2323 of this title.*

5 “(d) *PROCEDURES OTHER THAN COMPETITIVE PRO-*
6 *CEDURES.—(1) Procedures other than competitive proce-*
7 *dures may be used for purchasing property and services*
8 *only when the use of competitive procedures is not feasible*
9 *or appropriate. Standards for determining when the use of*
10 *competitive procedures is not feasible or appropriate shall*
11 *be set forth in the Federal Acquisition Regulation. Each*
12 *procurement using procedures other than competitive proce-*
13 *dures (other than a procurement for commercial items using*
14 *simplified procedures or a procurement in an amount not*
15 *greater than the simplified acquisition threshold) shall be*
16 *justified in writing and approved in accordance with the*
17 *Federal Acquisition Regulation.*

18 “(2) *In the case of a procurement using procedures*
19 *that preclude all but one source from responding (herein-*
20 *after in this subsection referred to as a ‘sole source procure-*
21 *ment’), the Federal Acquisition Regulation shall provide for*
22 *justification and approval under paragraph (1) of such pro-*
23 *curement under standards that set forth limited cir-*
24 *cumstances for such sole source procurements, including cir-*
25 *cumstances when—*

1 “(A) the property or services needed by the agen-
2 cy are available from only one responsible source and
3 no other type of property or services will satisfy the
4 needs of the agency;

5 “(B) the agency’s need for the property or serv-
6 ices is of such an unusual and compelling urgency
7 that the United States would be seriously injured un-
8 less the agency is permitted to award the contract for
9 the property or services to a particular source;

10 “(C) it is necessary to award the contract to a
11 particular source in order (i) to maintain a facility,
12 producer, manufacturer, or other supplier available
13 for furnishing property or services in case of a na-
14 tional emergency or to achieve industrial mobiliza-
15 tion, (ii) to establish or maintain an essential engi-
16 neering, research, or development capability to be pro-
17 vided by an educational or other nonprofit institution
18 or a federally funded research and development cen-
19 ter, or (iii) to procure the services of an expert for
20 use, in any litigation or dispute (including any rea-
21 sonably foreseeable litigation or dispute) involving the
22 Federal Government, in any trial, hearing, or pro-
23 ceeding before any court, administrative tribunal, or
24 agency, or in any part of an alternative dispute reso-

1 *lution process, whether or not the expert is expected*
2 *to testify;*

3 *“(D) the terms of an international agreement or*
4 *a treaty between the United States and a foreign gov-*
5 *ernment or international organization, or the written*
6 *directions of a foreign government reimbursing the*
7 *agency for the cost of the procurement of the property*
8 *or services for such government, have the effect of re-*
9 *quiring the award of the contract for the property or*
10 *services to a particular source;*

11 *“(E) subject to section 2304f, a statute expressly*
12 *authorizes or requires that the procurement be made*
13 *through another agency or from a specified source, or*
14 *the agency’s need is for a brand-name commercial*
15 *item for authorized resale;*

16 *“(F) the disclosure of the agency’s needs would*
17 *compromise the national security unless the agency is*
18 *permitted to award the contract for the property or*
19 *services needed by the agency to a particular source;*
20 *or*

21 *“(G) the head of the agency—*

22 *“(i) determines that it is necessary in the*
23 *public interest to award the contract for the*
24 *property or services needed by the agency to a*

1 *particular source in the particular procurement*
2 *concerned, and*

3 “(ii) *notifies the Congress in writing of such*
4 *determination not less than 30 days before the*
5 *award of the contract.*

6 “(3) *The authority of the head of an agency under*
7 *paragraph (2)(G) may not be delegated.*

8 “(e) *SIMPLIFIED PROCEDURES.—(1) In order to pro-*
9 *mote efficiency and economy in contracting and to avoid*
10 *unnecessary burdens for agencies and contractors, the Fed-*
11 *eral Acquisition Regulation shall provide for special sim-*
12 *plified procedures for purchases of property and services for*
13 *amounts not greater than the simplified acquisition thresh-*
14 *old.*

15 “(2) *A proposed purchase or contract for an amount*
16 *above the simplified acquisition threshold may not be di-*
17 *vided into several purchases or contracts for lesser amounts*
18 *in order to use the simplified procedures required by para-*
19 *graph (1).*

20 “(3) *In using simplified procedures, the head of an*
21 *agency shall ensure that competition is obtained to the max-*
22 *imum extent practicable consistent with the particular Gov-*
23 *ernment requirement.*

24 “(f) *CERTAIN CONTRACTS.—For the purposes of the*
25 *following laws, purchases or contracts awarded after using*

1 *procedures other than sealed-bid procedures shall be treated*
2 *as if they were made with sealed-bid procedures:*

3 *“(1) The Walsh-Healey Act (41 U.S.C. 35–45).*

4 *“(2) The Act entitled ‘An Act relating to the rate*
5 *of wages for laborers and mechanics employed on pub-*
6 *lic buildings of the United States and the District of*
7 *Columbia by contractors and subcontractors, and for*
8 *other purposes’, approved March 3, 1931 (commonly*
9 *referred to as the ‘Davis-Bacon Act’) (40 U.S.C.*
10 *276a—276a–5).”.*

11 *(2) Chapter 137 of title 10, United States Code, is*
12 *amended by inserting before section 2305 a new section—*

13 *(A) the designation and heading for which is as*
14 *follows:*

15 ***“§ 2304f. Merit-based selection”;***

16 *and*

17 *(B) the text of which consists of subsection (j) of*
18 *section 2304 of such title, as in effect on the day be-*
19 *fore the date of the enactment of this Act, modified—*

20 *(i) by striking out the subsection designa-*
21 *tion;*

22 *(ii) in paragraphs (2)(A), (3), and (4), by*
23 *striking out “subsection” and inserting in lieu*
24 *thereof “section” each place it appears;*

1 (iii) in paragraph (2)(C), by striking out
 2 “paragraph (1)” and inserting in lieu thereof
 3 “subsection (a)”;

4 (iv) by redesignating paragraphs (1), (2),
 5 (3), and (4) as subsections (a), (b), (c), and (d),
 6 respectively; and

7 (v) in subsection (b) (as so redesignated), by
 8 redesignating subparagraphs (A), (B), and (C)
 9 as paragraphs (1), (2), and (3), respectively.

10 (3) The table of sections at the beginning of such chap-
 11 ter is amended by inserting before the item relating section
 12 2305 the following new item:

 “2304 f. Merit-based selection.”.

13 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 303
 14 of the Federal Property and Administrative Services Act
 15 of 1949 (41 U.S.C. 253) is amended to read as follows:

16 **“SEC. 303. CONTRACTS: COMPETITION REQUIREMENTS.**

17 “(a) COMPETITION.—(1) Except as provided in sub-
 18 sections (b), (c), and (e) and except in the case of procure-
 19 ment procedures otherwise expressly authorized by statute,
 20 an executive agency in conducting a procurement for prop-
 21 erty or services—

22 “(A) shall obtain full and open competition—

23 “(i) that provides open access, and

24 “(ii) that is consistent with the need to effi-
 25 ciently fulfill the Government’s requirements,

1 *through the use of competitive procedures in accord-*
2 *ance with this chapter and the Federal Acquisition*
3 *Regulation; and*

4 *“(B) shall use the competitive procedure or com-*
5 *bination of competitive procedures that is best suited*
6 *under the circumstances of the procurement.*

7 *“(2) In determining the competitive procedure appro-*
8 *priate under the circumstances, an executive agency—*

9 *“(A) shall solicit sealed bids if—*

10 *“(i) time permits the solicitation, submis-*
11 *sion, and evaluation of sealed bids;*

12 *“(ii) the award will be made on the basis*
13 *of price and other price-related factors;*

14 *“(iii) it is not necessary to conduct discus-*
15 *sions with the responding sources about their*
16 *bids; and*

17 *“(iv) there is a reasonable expectation of re-*
18 *ceiving more than one sealed bid; and*

19 *“(B) shall request competitive proposals if sealed*
20 *bids are not appropriate under clause (A).*

21 *“(b) EXCLUSION OF PARTICULAR SOURCE.—An execu-*
22 *tive agency may provide for the procurement of property*
23 *or services covered by this chapter using competitive proce-*
24 *dures but excluding a particular source in order to establish*
25 *or maintain an alternative source or sources of supply for*

1 *that property or service. The Federal Acquisition Regula-*
 2 *tion shall set forth the circumstances under which a par-*
 3 *ticular source may be excluded pursuant to this subsection.*

4 “(c) *EXCLUSION OF CONCERNS OTHER THAN SMALL*
 5 *BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—An*
 6 *executive agency may provide for the procurement of prop-*
 7 *erty or services covered by this section using competitive*
 8 *procedures, but excluding concerns other than small busi-*
 9 *ness concerns in furtherance of sections 9 and 15 of the*
 10 *Small Business Act (15 U.S.C. 638, 644) and concerns other*
 11 *than small business concerns, historically Black colleges and*
 12 *universities, and minority institutions in furtherance of*
 13 *section 7102 of the Federal Acquisition Streamlining Act*
 14 *of 1994 (15 U.S.C. 644 note).*

15 “(d) *PROCEDURES OTHER THAN COMPETITIVE PRO-*
 16 *CEDURES.—(1) Procedures other than competitive proce-*
 17 *dures may be used for purchasing property and services*
 18 *only when the use of competitive procedures is not feasible*
 19 *or appropriate. Standards for determining when the use of*
 20 *competitive procedures is not feasible or appropriate shall*
 21 *be set forth in the Federal Acquisition Regulation. Each*
 22 *procurement using procedures other than competitive proce-*
 23 *dures (other than a procurement for commercial items using*
 24 *simplified procedures or a procurement in an amount not*
 25 *greater than the simplified acquisition threshold) shall be*

1 *justified in writing and approved in accordance with the*
2 *Federal Acquisition Regulation.*

3 “(2) *In the case of a procurement using procedures*
4 *that preclude all but one source from responding (herein-*
5 *after in this subsection referred to as a ‘sole source procure-*
6 *ment’), the Federal Acquisition Regulation shall provide for*
7 *justification and approval under paragraph (1) of such pro-*
8 *curement under standards that set forth limited cir-*
9 *cumstances for such sole source procurements, including cir-*
10 *cumstances when—*

11 “(A) *the property or services needed by the exec-*
12 *utive agency are available from only one responsible*
13 *source and no other type of property or services will*
14 *satisfy the needs of the executive agency;*

15 “(B) *the executive agency’s need for the property*
16 *or services is of such an unusual and compelling ur-*
17 *gency that the United States would be seriously in-*
18 *jured unless the executive agency is permitted to*
19 *award the contract for the property or services to a*
20 *particular source;*

21 “(C) *it is necessary to award the contract to a*
22 *particular source in order (i) to maintain a facility,*
23 *producer, manufacturer, or other supplier available*
24 *for furnishing property or services in case of a na-*
25 *tional emergency or to achieve industrial mobiliza-*

1 *tion, (ii) to establish or maintain an essential engi-*
2 *neering, research, or development capability to be pro-*
3 *vided by an educational or other nonprofit institution*
4 *or a federally funded research and development cen-*
5 *ter, or (iii) to procure the services of an expert for*
6 *use, in any litigation or dispute (including any rea-*
7 *sonably foreseeable litigation or dispute) involving the*
8 *Federal Government, in any trial, hearing, or pro-*
9 *ceeding before any court, administrative tribunal, or*
10 *agency, or in any part of an alternative dispute reso-*
11 *lution process, whether or not the expert is expected*
12 *to testify;*

13 *“(D) the terms of an international agreement or*
14 *treaty between the United States Government and a*
15 *foreign government or international organization, or*
16 *the written directions of a foreign government reim-*
17 *bursing the executive agency for the cost of the pro-*
18 *curement of the property or services for such govern-*
19 *ment, have the effect of requiring the award of the*
20 *contract for the property or services to a particular*
21 *source;*

22 *“(E) subject to section 303M, a statute expressly*
23 *authorizes or requires that the procurement be made*
24 *through another executive agency or from a specified*

1 *source, or the agency's need is for a brand-name com-*
2 *mercial item for authorized resale;*

3 *“(F) the disclosure of the executive agency's*
4 *needs would compromise the national security unless*
5 *the agency is permitted to award the contract for the*
6 *property or services needed by the agency to a par-*
7 *ticular source; or*

8 *“(G) the head of the executive agency—*

9 *“(i) determines that it is necessary in the*
10 *public interest to award the contract for the*
11 *property or services needed by the agency to a*
12 *particular source in the particular procurement*
13 *concerned, and*

14 *“(ii) notifies the Congress in writing of such*
15 *determination not less than 30 days before the*
16 *award of the contract.*

17 *“(3) The authority of the head of an executive agency*
18 *under paragraph (2)(G) may not be delegated.*

19 *“(e) SIMPLIFIED PROCEDURES.—(1) In order to pro-*
20 *mote efficiency and economy in contracting and to avoid*
21 *unnecessary burdens for agencies and contractors, the Fed-*
22 *eral Acquisition Regulation shall provide for special sim-*
23 *plified procedures for purchases of property and services for*
24 *amounts not greater than the simplified acquisition thresh-*
25 *old.*

1 “(2)(A) *The Administrator of General Services shall*
2 *prescribe regulations that provide special simplified proce-*
3 *dures for acquisitions of leasehold interests in real property*
4 *at rental rates that do not exceed the simplified acquisition*
5 *threshold.*

6 “(B) *For purposes of subparagraph (A), the rental rate*
7 *or rates under a multiyear lease do not exceed the simplified*
8 *acquisition threshold if the average annual amount of the*
9 *rent payable for the period of the lease does not exceed the*
10 *simplified acquisition threshold.*

11 “(3) *A proposed purchase or contract or for an amount*
12 *above the simplified acquisition threshold may not be di-*
13 *vided into several purchases or contracts for lesser amounts*
14 *in order to use the simplified procedures required by para-*
15 *graph (1).*

16 “(4) *In using simplified procedures, an executive agen-*
17 *cy shall ensure that competition is obtained to the maxi-*
18 *mum extent practicable consistent with the particular Gov-*
19 *ernment requirement.”.*

20 (2) *Title III of the Federal Property and Administra-*
21 *tive Services Act of 1949 (41 U.S.C. 251 et seq.) is amended*
22 *by inserting after section 303L a new section—*

23 (A) *the designation and heading for which is as*
24 *follows:*

1 ***“SEC. 303M. MERIT-BASED SELECTION.”***;

2 *and*

3 *(B) the text of which consists of subsection (h) of*
 4 *section 303 of such Act, as in effect on the day before*
 5 *the date of the enactment of this Act, modified—*

6 *(i) by striking out the subsection designa-*
 7 *tion;*

8 *(ii) in paragraphs (2)(A), (3), and (4), by*
 9 *striking out “subsection” and inserting in lieu*
 10 *thereof “section” each place it appears;*

11 *(iii) in paragraph (2)(C), by striking out*
 12 *“paragraph (1)” and inserting in lieu thereof*
 13 *“subsection (a)”;*

14 *(iv) by redesignating paragraphs (1), (2),*
 15 *(3), and (4) as subsections (a), (b), (c), and (d),*
 16 *respectively; and*

17 *(v) in subsection (b) (as so redesignated), by*
 18 *redesignating subparagraphs (A), (B), and (C)*
 19 *as paragraphs (1), (2), and (3), respectively.*

20 *(3) The table of contents for the Federal Property and*
 21 *Administrative Services Act of 1949 (contained in section*
 22 *1(b)) is amended—*

23 *(A) by striking out the item relating to section*
 24 *303 and inserting in lieu thereof the following:*

“Sec. 303. Contracts: competition requirements.”;

25 *and*

1 (B) by inserting after the item relating to section
2 303L the following new item:

“Sec. 303M. Merit-based selection.”.

3 (c) *REVISIONS TO PROCUREMENT NOTICE PROVI-*
4 *SIONS.—Section 18 of the Office of Federal Procurement*
5 *Policy Act (41 U.S.C. 416) is amended—*

6 (1) *in subsection (a)—*

7 (A) *in subparagraph (B) of paragraph*
8 *(1)—*

9 (i) *by striking out “subsection (f)—”*
10 *and all that follows through the end of the*
11 *subparagraph and inserting in lieu thereof*
12 *“subsection (b); and”; and*

13 (ii) *by inserting after “property or*
14 *services” the following: “for a price expected*
15 *to exceed \$10,000 but not to exceed*
16 *\$25,000”;*

17 (B) *by striking out paragraph (4); and*

18 (C) *by redesignating paragraphs (5) and*
19 *(6) as paragraphs (4) and (5), respectively; and*
20 *(2) in subsection (b)—*

21 (A) *by amending subparagraph (B) of*
22 *paragraph (2) to read as follows:*

23 *“(B) state whether the acquisition is to be*
24 *conducted pursuant to a contractor verification*
25 *system (as provided pursuant to section 35) or*

1 *whether the offeror, its product, or its service oth-*
2 *erwise must meet a qualification requirement in*
3 *order to be eligible for award and, if so, identify*
4 *the criteria to be used in determining such eligi-*
5 *bility;”;* and

6 *(B) by amending paragraph (4) to read as*
7 *follows:*

8 *“(4) a statement that all responsible sources may*
9 *submit for consideration a bid, proposal, or*
10 *quotation;”.*

11 *(d) EXECUTIVE AGENCY RESPONSIBILITIES.—(1) Sec-*
12 *tion 16 of the Office of Federal Procurement Policy Act (41*
13 *U.S.C. 414) is amended—*

14 *(A) by striking out “achieve” in the matter pre-*
15 *ceding paragraph (1) and inserting in lieu thereof*
16 *“promote”; and*

17 *(B) by amending paragraph (1) to read as fol-*
18 *lows:*

19 *“(1) to implement competition that provides*
20 *open access for responsible sources in the procurement*
21 *of property or services by the executive agency by es-*
22 *tablishing policies, procedures, and practices that are*
23 *consistent with the need to efficiently fulfill the Gov-*
24 *ernment’s requirements;”.*

1 (2) *Section 20 of such Act (41 U.S.C. 418) is amended*
 2 *in subsection (a)(2)(A) by striking out “serving in a posi-*
 3 *tion authorized for such executive agency on the date of en-*
 4 *actment of the Competition in Contracting Act of 1984”.*

5 ***SEC. 102. DEFINITIONS RELATING TO COMPETITION RE-***
 6 ***QUIREMENTS.***

7 (a) *DEFINITION.—Paragraphs (5) and (6) of section*
 8 *4 of the Office of Federal Procurement Policy Act (41*
 9 *U.S.C. 403) are amended to read as follows:*

10 *“(5) The term ‘competitive procedures’ means*
 11 *procedures under which an agency enters into a con-*
 12 *tract pursuant to full and open competition that pro-*
 13 *vides open access and is consistent with the need to*
 14 *efficiently fulfill the Government’s requirements.*

15 *“(6) The term ‘open access’, when used with re-*
 16 *spect to a procurement, means that all responsible*
 17 *sources are permitted to submit sealed bids or com-*
 18 *petitive proposals on the procurement.”.*

19 (b) *CONFORMING AMENDMENTS.—*

20 (1) *OFFICE OF FEDERAL PROCUREMENT POLICY*
 21 *ACT.—Section 20 of the Office of Federal Procurement*
 22 *Policy Act is amended—*

23 (A) *in subsection (b)(1), subsection*
 24 *(b)(3)(A), and subsection (c), by inserting after*
 25 *“full and open competition” the following: “that*

1 *provides open access and is consistent with the*
2 *need to efficiently fulfill the Government's re-*
3 *quirements" each place it appears; and*

4 *(B) in subsection (b)(4)(C), by striking out*
5 *"to full and open competition that remain" and*
6 *inserting in lieu thereof "that remain to achiev-*
7 *ing full and open competition that provides open*
8 *access and is consistent with the need to effi-*
9 *ciently fulfill the Government's requirements".*

10 *(2) TITLE 10.—Title 10, United States Code, is*
11 *amended—*

12 *(A) in section 2302(2), by striking out the*
13 *first sentence and inserting in lieu thereof the*
14 *following: "The term 'competitive procedures'*
15 *means procedures under which an agency enters*
16 *into a contract pursuant to full and open com-*
17 *petition that provides open access and is consist-*
18 *ent with the need to efficiently fulfill the Govern-*
19 *ment's requirements.";*

20 *(B) in section 2302(3)(D), by striking out*
21 *"full and open competition" and inserting in*
22 *lieu thereof "open access";*

23 *(C) in section 2323(e)(3), by striking out*
24 *"less than full and open" and inserting in lieu*
25 *thereof "procedures other than"; and*

1 (D) in section 2323(i)(3)(A), by striking out
2 “full and open”.

3 (3) *FEDERAL PROPERTY AND ADMINISTRATIVE*
4 *SERVICES ACT.*—Title III of the Federal Property and
5 Administrative Services Act of 1949 (41 U.S.C. 251
6 *et seq.*) is amended—

7 (A) in section 309(b), by striking out the
8 first sentence and inserting in lieu thereof the
9 following: “The term ‘competitive procedures’
10 means procedures under which an executive
11 agency enters into a contract pursuant to full
12 and open competition that provides open access
13 and is consistent with the need to efficiently ful-
14 fill the Government’s requirements.”;

15 (B) in section 309(c)(4), by striking out
16 “full and open competition” and inserting in
17 lieu thereof “open access”; and

18 (C) in section 304B(a)(2)(B), by striking
19 out “encouraging full and open competition or”.

20 (4) *OTHER LAWS.*—Section 7102 of the Federal
21 Acquisition Streamlining Act of 1994 (108 Stat.
22 3367; 15 U.S.C. 644 note) is amended in subsection
23 (a)(1)(A) by striking out “less than full and open
24 competition” and inserting in lieu thereof “procedures
25 other than competitive procedures”.

1 **SEC. 103. CONTRACT SOLICITATION AMENDMENTS.**

2 (a) *ARMED SERVICES ACQUISITIONS*.—Section 2305 of
3 title 10, United States Code, is amended—

4 (1) in subsection (a)(1)—

5 (A) by striking out subparagraph (A) and
6 inserting in lieu thereof the following: “(A) In
7 preparing for the procurement of property or
8 services, the head of an agency shall use advance
9 procurement planning and market research.”;

10 (B) by striking out subparagraph (B); and

11 (C) by redesignating subparagraph (C) as
12 subparagraph (B) and in that subparagraph by
13 striking out “For the purposes of subparagraphs
14 (A) and (B), the” and inserting in lieu thereof
15 “Each solicitation under this chapter shall in-
16 clude specifications that include restrictive provi-
17 sions or conditions only to the extent necessary
18 to satisfy the needs of the agency or as author-
19 ized by law. The”;

20 (2) in subsection (a)(2), by inserting after
21 “(other than for” the following: “a procurement for
22 commercial items using simplified procedures or”;
23 and

24 (3) in subsection (b)(4)(A)(i), by striking out
25 “all” and inserting in lieu thereof “the”.

1 (b) *CIVILIAN AGENCY ACQUISITIONS*.—(1) *Section*
2 *303A of the Federal Property and Administrative Services*
3 *Act of 1949 (41 U.S.C. 253a) is amended—*

4 (A) *in subsection (a)—*

5 (i) *by striking out paragraph (1) and in-*
6 *serting in lieu thereof the following: “(1) In pre-*
7 *paring for the procurement of property or serv-*
8 *ices, an executive agency shall use advance pro-*
9 *curement planning and market research.”;*

10 (ii) *by striking out paragraph (2); and*

11 (iii) *by redesignating paragraph (3) as*
12 *paragraph (2) and in that paragraph by strik-*
13 *ing out “For the purposes of paragraphs (1) and*
14 *(2), the” and inserting in lieu there of “Each so-*
15 *licitation under this title shall include specifica-*
16 *tions that include restrictive provisions or condi-*
17 *tions only to the extent necessary to satisfy the*
18 *needs of the executive agency or as authorized by*
19 *law. The”;* and

20 (B) *in subsection (b), by inserting after “(other*
21 *than for” the following: “a procurement for commer-*
22 *cial items using simplified procedures or”.*

23 (2) *Section 303B(d)(1)(A) of such Act (41 U.S.C.*
24 *253b) is amended by striking out “all” and inserting in*
25 *lieu thereof “the”.*

1 **SEC. 104. PREAWARD DEBRIEFINGS.**

2 (a) *ARMED SERVICES ACQUISITIONS.*—Section
3 2305(b) of title 10, United States Code, is amended—

4 (1) by striking out subparagraph (F) of para-
5 graph (5);

6 (2) by redesignating paragraph (6) as para-
7 graph (8); and

8 (3) by inserting after paragraph (5) the follow-
9 ing new paragraphs:

10 “(6)(A) When the contracting officer excludes an
11 offeror submitting a competitive proposal from the competi-
12 tive range (or otherwise excludes such an offeror from fur-
13 ther consideration prior to the final source selection deci-
14 sion), the excluded offeror may request in writing, within
15 three days after the date on which the excluded offeror re-
16 ceives notice of its exclusion, a debriefing prior to award.
17 The contracting officer shall make every effort to debrief the
18 unsuccessful offeror as soon as practicable and may refuse
19 the request for a debriefing if it is not in the best interests
20 of the Government to conduct a debriefing at that time.

21 “(B) The contracting officer is required to debrief an
22 excluded offeror in accordance with paragraph (5) of this
23 section only if that offeror requested and was refused a
24 preaward debriefing under subparagraph (A) of this para-
25 graph.

1 “(C) The debriefing conducted under this subsection
2 shall include—

3 “(i) the executive agency’s evaluation of the sig-
4 nificant elements in the offeror’s offer;

5 “(ii) a summary of the rationale for the offeror’s
6 exclusion; and

7 “(iii) reasonable responses to relevant questions
8 posed by the debriefed offeror as to whether source se-
9 lection procedures set forth in the solicitation, appli-
10 cable regulations, and other applicable authorities
11 were followed by the executive agency.

12 “(D) The debriefing conducted pursuant to this sub-
13 section may not disclose the number or identity of other
14 offerors and shall not disclose information about the con-
15 tent, ranking, or evaluation of other offerors’ proposals.

16 “(7) The contracting officer shall include a summary
17 of any debriefing conducted under paragraph (5) or (6) in
18 the contract file.”.

19 (b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B of
20 the Federal Property and Administrative Services Act of
21 1949 (41 U.S.C. 253b) is amended—

22 (1) by striking out paragraph (6) of subsection
23 (e);

1 (2) by redesignating subsections (f), (g), (h), and
2 (i) as subsections (h), (i), (j), and (k), respectively;
3 and

4 (3) by inserting after subsection (e) the following
5 new subsections:

6 “(f)(1) When the contracting officer excludes an offeror
7 submitting a competitive proposal from the competitive
8 range (or otherwise excludes such an offeror from further
9 consideration prior to the final source selection decision),
10 the excluded offeror may request in writing, within 3 days
11 after the date on which the excluded offeror receives notice
12 of its exclusion, a debriefing prior to award. The contract-
13 ing officer shall make every effort to debrief the unsuccessful
14 offeror as soon as practicable and may refuse the request
15 for a debriefing if it is not in the best interests of the Gov-
16 ernment to conduct a debriefing at that time.

17 “(2) The contracting officer is required to debrief an
18 excluded offeror in accordance with subsection (e) of this
19 section only if that offeror requested and was refused a
20 preaward debriefing under paragraph (1) of this subsection.

21 “(3) The debriefing conducted under this subsection
22 shall include—

23 “(A) the executive agency’s evaluation of the sig-
24 nificant elements in the offeror’s offer;

1 “(B) a summary of the rationale for the offeror’s
2 exclusion; and

3 “(C) reasonable responses to relevant questions
4 posed by the debriefed offeror as to whether source se-
5 lection procedures set forth in the solicitation, appli-
6 cable regulations, and other applicable authorities
7 were followed by the executive agency.

8 “(4) The debriefing conducted pursuant to this sub-
9 section may not disclose the number or identity of other
10 offerors and shall not disclose information about the con-
11 tent, ranking, or evaluation of other offerors’ proposals.

12 “(g) The contracting officer shall include a summary
13 of any debriefing conducted under subsection (e) or (f) in
14 the contract file.”.

15 **SEC. 105. CONTRACT TYPES.**

16 (a) *ARMED SERVICES ACQUISITIONS*.—(1) Section
17 2306 of title 10, United States Code, is amended—

18 (A) by inserting before the period at the end of
19 subsection (a) the following: “, based on market condi-
20 tions, established commercial practice (if any) for the
21 product or service being acquired, and sound business
22 judgment”;

23 (B) by striking out subsections (b), (d), (e), (f),
24 and (h); and

1 (C) by redesignating subsection (g) as subsection
2 (b).

3 (2) The heading of such section is amended to read
4 as follows:

5 **“§2306. Contract types”.**

6 (3) The item relating to section 2306 in the table of
7 sections at the beginning of chapter 137 of such title is
8 amended to read as follows:

 “2306. Contract types.”.

9 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 304
10 of the Federal Property and Administrative Services Act
11 of 1949 (41 U.S.C. 254) is amended—

12 (A) by inserting before the period at the end of
13 the first sentence of subsection (a) the following: “,
14 based on market conditions, established commercial
15 practice (if any) for the product or service being ac-
16 quired, and sound business judgment”;

17 (B) by striking out “Every contract awarded” in
18 the second sentence of subsection (a) and all that fol-
19 lows through the end of the subsection; and

20 (C) in subsection (b), by striking out “used,” in
21 the first sentence and all that follows through the end
22 of the subsection and inserting in lieu thereof “used.”.

23 (2) The heading of such section is amended to read
24 as follows:

1 ***“SEC. 304. CONTRACT TYPES.”***

2 (3) *The item relating to section 304 in the table of*
3 *contents for such Act (contained in section 1(b)) is amended*
4 *to read as follows:*

“Sec. 304. Contract types.”

5 (c) *CONFORMING REPEALS.—(1) Sections 4540, 7212,*
6 *and 9540 of title 10, United States Code, are repealed.*

7 (2) *The table of sections at the beginning of chapter*
8 *433 of such title is amended by striking out the item relat-*
9 *ing to section 4540.*

10 (3) *The table of sections at the beginning of chapter*
11 *631 of such title is amended by striking out the item relat-*
12 *ing to section 7212.*

13 (4) *The table of sections at the beginning of chapter*
14 *933 of such title is amended by striking out the item relat-*
15 *ing to section 9540.*

16 (d) *CIVIL WORKS AUTHORITY.—(1) Part IV of subtitle*
17 *A of title 10, United States Code, is amended—*

18 (A) *by transferring section 2855 to the end of*
19 *chapter 137; and*

20 (B) *by striking out the section heading and sub-*
21 *section (a) of such section and inserting in lieu there-*
22 *of the following:*

1 **“§2332. Contracts for architectural and engineering**
 2 **services**

3 “(a) *The Secretary of Defense and the Secretaries of*
 4 *the military departments may enter into contracts for ar-*
 5 *chitectural and engineering services in connection with a*
 6 *military construction or family housing project or for other*
 7 *Department of Defense or military department purposes.*
 8 *Such contracts shall be awarded in accordance with the*
 9 *Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.).”.*

10 (2) *The table of sections at the beginning of chapter*
 11 *137 of such title is amended by adding at the end the follow-*
 12 *ing new item:*

“2332. Contracts for architectural and engineering services.”.

13 (3) *The table of sections at the beginning of chapter*
 14 *169 of such title is amended by striking out the item relat-*
 15 *ing to section 2855.*

16 **SEC. 106. CONTRACTOR PERFORMANCE.**

17 (a) *REQUIREMENT FOR SYSTEM.*—*The Office of Fed-*
 18 *eral Procurement Policy Act (41 U.S.C. 401 et seq.) is*
 19 *amended by adding at the end the following new section:*

20 **“SEC. 35. CONTRACTOR PERFORMANCE.**

21 “(a) *VERIFICATION SYSTEM.*—

22 “(1) *REQUIREMENT.*—*The Federal Acquisition*
 23 *Regulation shall provide for a contractor verification*
 24 *system in accordance with this section.*

1 “(2) *PROCEDURES.*—*The Federal Acquisition*
2 *Regulation shall provide procedures for the head of an*
3 *executive agency to follow in order to verify a con-*
4 *tractor as eligible to compete for contracts to furnish*
5 *property or services that are procured by the executive*
6 *agency on a recurring basis.*

7 “(3) *NOTIFICATION.*—*The procedures shall in-*
8 *clude a requirement that the head of an executive*
9 *agency provide for the publication of appropriate no-*
10 *tification about the verification system in the Com-*
11 *merce Business Daily.*

12 “(b) *EVALUATION.*—(1) *Under the procedures referred*
13 *to in subsection (a)(2), the head of an executive agency in*
14 *granting a verification to a contractor shall use the follow-*
15 *ing factors as the basis of the evaluation:*

16 “(A) *The efficiency and effectiveness of its busi-*
17 *ness practices.*

18 “(B) *The level of quality of its product or serv-*
19 *ice.*

20 “(C) *Past performance of the contractor with re-*
21 *gard to the particular property or service.*

22 “(2)(A) *The evaluation of past performance may in-*
23 *clude performance under—*

24 “(i) *a contract with an executive agency of the*
25 *Federal Government;*

1 “(ii) a contract with an agency of a State or
2 local government; or

3 “(iii) a contract with an entity in the private
4 sector.

5 “(B) The procedures shall include a requirement that,
6 in the case of a contractor with respect to which there is
7 no information on past contract performance or with re-
8 spect to which information on past contract performance
9 is not available, the contractor may not be evaluated favor-
10 ably or unfavorably on the factor of past performance.

11 “(c) OPPORTUNITY FOR ALL INTERESTED SOURCES.—
12 The Federal Acquisition Regulation shall provide proce-
13 dures for ensuring that all interested sources, including
14 small businesses, have a fair opportunity to be considered
15 for verification under the verification system.

16 “(d) PROCUREMENT FROM VERIFIED CONTRAC-
17 TORS.—The Federal Acquisition Regulation shall provide
18 procedures under which the head of an executive agency
19 may enter into a contract for the procurement of property
20 or services referred to in subsection (a)(2) on the basis of
21 a competition in accordance with section 2304 of title 10,
22 United States Code, or section 303 of the Federal Property
23 and Administrative Services Act of 1949 (41 U.S.C. 253)
24 for contractors verified with respect to such property or
25 services pursuant to the contractor verification system.

1 “(e) *TERMINATION OF VERIFICATION.*—*The Federal*
 2 *Acquisition Regulation shall provide procedures under*
 3 *which the head of an executive agency—*

4 “(1) *may provide for the termination of a ver-*
 5 *ification granted a contractor under this section upon*
 6 *the expiration of a period specified by the head of an*
 7 *executive agency;*

8 “(2) *may revoke a verification granted a con-*
 9 *tractor under this section upon a determination that*
 10 *the quality of performance of the contractor does not*
 11 *meet standards applied by the head of the executive*
 12 *agency as of the time of the revocation decision; and*

13 “(3) *may provide that a contractor whose ver-*
 14 *ification is terminated or revoked will have a fair op-*
 15 *portunity to be considered for reentry into the ver-*
 16 *ification system.*

17 “(f) *SPECIAL APPLICABILITY RULE.*—*Notwithstanding*
 18 *section 34, the verification system shall apply to the pro-*
 19 *curement of commercial items.’’.*

20 (b) *REPEALS.*—*Section 2319 of title 10, United States*
 21 *Code, is repealed. Section 303C of the Federal Property and*
 22 *Administrative Services Act of 1949 (41 U.S.C. 253c) is*
 23 *repealed.*

24 (c) *CLERICAL AMENDMENTS.*—(1) *The table of con-*
 25 *tents for the Office of Federal Procurement Policy Act (con-*

1 *tained in section 1(b)) is amended by adding at the end*
 2 *the following new item:*

“Sec. 35. Contractor performance.”.

3 *(2) The table of sections at the beginning of chapter*
 4 *137 of title 10, United States Code, is amended by striking*
 5 *out the item relating to section 2319.*

6 *(3) The table of contents for the Federal Property and*
 7 *Administrative Services Act of 1949 (contained in section*
 8 *1(b)) is amended by striking out the item relating to section*
 9 *303C.*

10 ***TITLE II—COMMERCIAL ITEMS***

11 ***SEC. 201. COMMERCIAL ITEM EXCEPTION TO REQUIREMENT*** 12 ***FOR COST OR PRICING DATA AND INFORMA-*** 13 ***TION LIMITATIONS.***

14 *(a) ARMED SERVICES ACQUISITIONS.—(1) Subsections*
 15 *(b), (c), and (d) of section 2306a of title 10, United States*
 16 *Code, are amended to read as follows:*

17 *“(b) EXCEPTIONS.—*

18 *“(1) IN GENERAL.—Submission of cost or pric-*
 19 *ing data shall not be required under subsection (a) in*
 20 *the case of a contract, a subcontract, or modification*
 21 *of a contract or subcontract—*

22 *“(A) for which the price agreed upon is*
 23 *based on—*

24 *“(i) adequate price competition; or*

25 *“(ii) prices set by law or regulation;*

1 “(B) for the acquisition of a commercial
2 item; or

3 “(C) in an exceptional case when the head
4 of the procuring activity, without delegation, de-
5 termines that the requirements of this section
6 may be waived and justifies in writing the rea-
7 sons for such determination.

8 “(2) MODIFICATIONS OF CONTRACTS AND SUB-
9 CONTRACTS FOR COMMERCIAL ITEMS.—In the case of
10 a modification of a contract or subcontract for a com-
11 mercial item that is not covered by the exception on
12 the submission of cost or pricing data in paragraph
13 (1)(A) or (1)(B), submission of cost or pricing data
14 shall not be required under subsection (a) if—

15 “(A) the contract or subcontract being
16 modified is a contract or subcontract for which
17 submission of cost or pricing data may not be
18 required by reason of paragraph (1)(A) or
19 (1)(B); and

20 “(B) the modification would not change the
21 contract or subcontract, as the case may be, from
22 a contract or subcontract for the acquisition of
23 a commercial item to a contract or subcontract
24 for the acquisition of an item other than a com-
25 mercial item.

1 “(c) *AUTHORITY TO REQUIRE COST OR PRICING DATA*
 2 *ON BELOW-THRESHOLD CONTRACTS.*—(1) *Subject to para-*
 3 *graph (2), when certified cost or pricing data are not re-*
 4 *quired to be submitted by subsection (a) for a contract, sub-*
 5 *contract, or modification of a contract or subcontract, such*
 6 *data may nevertheless be required to be submitted by the*
 7 *head of the procuring activity, but only if the head of the*
 8 *procuring activity determines that such data are necessary*
 9 *for the evaluation by the agency of the reasonableness of*
 10 *the price of the contract, subcontract, or modification of a*
 11 *contract or subcontract. In any case in which the head of*
 12 *the procuring activity requires such data to be submitted*
 13 *under this subsection, the head of the procuring activity*
 14 *shall justify in writing the reason for such requirement.*

15 “(2) *The head of the procuring activity may not re-*
 16 *quire certified cost or pricing data to be submitted under*
 17 *this paragraph for any contract or subcontract, or modi-*
 18 *fication of a contract or subcontract, covered by the excep-*
 19 *tions in subparagraph (A) or (B) of subsection (b)(1).*

20 “(3) *The head of a procuring activity may not delegate*
 21 *functions under this paragraph.*

22 “(d) *LIMITATIONS ON OTHER INFORMATION.*—*The*
 23 *Federal Acquisition Regulation shall include the following:*

24 “(1) *Provisions concerning the types of informa-*
 25 *tion that contracting officers may consider in deter-*

1 *mining whether the price of a procurement to the*
2 *Government is fair and reasonable when certified cost*
3 *or pricing data are not required to be submitted*
4 *under this section, including appropriate information*
5 *on the prices at which the same item or similar items*
6 *have previously been sold that is adequate for evaluat-*
7 *ing the reasonableness of the price of the proposed*
8 *contract or subcontract for the procurement.*

9 *“(2) Reasonable limitations on requests for sales*
10 *data relating to commercial items.*

11 *“(3) A requirement that a contracting officer*
12 *shall, to the maximum extent practicable, limit the*
13 *scope of any request for information relating to com-*
14 *mercial items from an offeror to only that informa-*
15 *tion that is in the form regularly maintained by the*
16 *offeror in commercial operations.*

17 *“(4) A statement that any information received*
18 *relating to commercial items that is exempt from dis-*
19 *closure under section 552(b) of title 5 shall not be dis-*
20 *closed by the Federal Government.”.*

21 *(2) Section 2306a of such title is further amended—*

22 *(A) by striking out subsection (h); and*

23 *(B) by redesignating subsection (i) as subsection*

24 *(h).*

1 (3) *Section 2375 of title 10, United States Code, is*
2 *amended by striking out subsection (c).*

3 (b) *CIVILIAN AGENCY ACQUISITIONS.—(1) Subsections*
4 *(b), (c) and (d) of section 304A of the Federal Property*
5 *and Administrative Services Act of 1949 (41 U.S.C. 254b)*
6 *are amended to read as follows:*

7 “(b) *EXCEPTIONS.—*

8 “(1) *IN GENERAL.—Submission of cost or pric-*
9 *ing data shall not be required under subsection (a) in*
10 *the case of a contract, a subcontract, or a modifica-*
11 *tion of a contract or subcontract—*

12 “(A) *for which the price agreed upon is*
13 *based on—*

14 “(i) *adequate price competition; or*

15 “(ii) *prices set by law or regulation;*

16 “(B) *for the acquisition of a commercial*
17 *item; or*

18 “(C) *in an exceptional case when the head*
19 *of the procuring activity, without delegation, de-*
20 *termines that the requirements of this section*
21 *may be waived and justifies in writing the rea-*
22 *sons for such determination.*

23 “(2) *MODIFICATIONS OF CONTRACTS AND SUB-*
24 *CONTRACTS FOR COMMERCIAL ITEMS.—In the case of*
25 *a modification of a contract or subcontract for a com-*

1 *mercial item that is not covered by the exception on*
2 *the submission of cost or pricing data in paragraph*
3 *(1)(A) or (1)(B), submission of cost or pricing data*
4 *shall not be required under subsection (a) if—*

5 *“(A) the contract or subcontract being*
6 *modified is a contract or subcontract for which*
7 *submission of cost or pricing data may not be*
8 *required by reason of paragraph (1)(A) or*
9 *(1)(B); and*

10 *“(B) the modification would not change the*
11 *contract or subcontract, as the case may be, from*
12 *a contract or subcontract for the acquisition of*
13 *a commercial item to a contract or subcontract*
14 *for the acquisition of an item other than a com-*
15 *mercial item.*

16 *“(c) AUTHORITY TO REQUIRE COST OR PRICING DATA*
17 *ON BELOW-THRESHOLD CONTRACTS.—(1) Subject to para-*
18 *graph (2), when certified cost or pricing data are not re-*
19 *quired to be submitted by subsection (a) for a contract, sub-*
20 *contract, or modification of a contract or subcontract, such*
21 *data may nevertheless be required to be submitted by the*
22 *head of the procuring activity, but only if the head of the*
23 *procuring activity determines that such data are necessary*
24 *for the evaluation by the agency of the reasonableness of*
25 *the price of the contract, subcontract, or modification of a*

1 *contract or subcontract. In any case in which the head of*
2 *the procuring activity requires such data to be submitted*
3 *under this subsection, the head of the procuring activity*
4 *shall justify in writing the reason for such requirement.*

5 “(2) *The head of the procuring activity may not re-*
6 *quire certified cost or pricing data to be submitted under*
7 *this paragraph for any contract or subcontract, or modi-*
8 *fication of a contract or subcontract, covered by the excep-*
9 *tions in subparagraph (A) or (B) of subsection (b)(1).*

10 “(3) *The head of a procuring activity may not delegate*
11 *the functions under this paragraph.*

12 “(d) *LIMITATIONS ON OTHER INFORMATION.—The*
13 *Federal Acquisition Regulation shall include the following:*

14 “(1) *Provisions concerning the types of informa-*
15 *tion that contracting officers may consider in deter-*
16 *mining whether the price of a procurement to the*
17 *Government is fair and reasonable when certified cost*
18 *or pricing data are not required to be submitted*
19 *under this section, including appropriate information*
20 *on the prices at which the same item or similar items*
21 *have previously been sold that is adequate for evaluat-*
22 *ing the reasonableness of the price of the proposed*
23 *contract or subcontract for the procurement.*

24 “(2) *Reasonable limitations on requests for sales*
25 *data relating to commercial items.*

1 “(3) A requirement that a contracting officer
 2 shall, to the maximum extent practicable, limit the
 3 scope of any request for information relating to com-
 4 mercial items from an offeror to only that informa-
 5 tion that is in the form regularly maintained by the
 6 offeror in commercial operations.

7 “(4) A statement that any information received
 8 relating to commercial items that is exempt from dis-
 9 closure under section 552(b) of title 5 shall not be dis-
 10 closed by the Federal Government.”.

11 (2) Section 304A of such Act is further amended—

12 (A) by striking out subsection (h); and

13 (B) by redesignating subsection (i) as subsection
 14 (h).

15 **SEC. 202. APPLICATION OF SIMPLIFIED PROCEDURES TO**
 16 **COMMERCIAL ITEMS.**

17 (a) *ARMED SERVICES ACQUISITIONS.*—Section
 18 2304(e) of title 10, United States Code, as amended by sec-
 19 tion 101(a), is further amended—

20 (1) in paragraph (1), by inserting after “special
 21 simplified procedures” the following: “for purchases of
 22 commercial items and”; and

23 (2) by adding at the end the following new para-
 24 graph:

1 “(4) The Federal Acquisition Regulation shall provide
2 that, in the case of a purchase of commercial items in an
3 amount greater than the simplified acquisition threshold,
4 the head of an agency—

5 “(A) may not conduct the purchase on a sole
6 source basis unless the need to do so is justified in
7 writing and approved in accordance with the Federal
8 Acquisition Regulation; and

9 “(B) shall include in the contract file a written
10 description of the procedures used in awarding the
11 contract and the number of offers received.”.

12 (b) CIVILIAN AGENCY ACQUISITIONS.—Section 303(e)
13 of the Federal Property and Administrative Services Act
14 of 1949 (41 U.S.C. 253), as amended by section 101(b), is
15 further amended—

16 (1) in paragraph (1), by inserting after “special
17 simplified procedures” the following: “for purchases of
18 commercial items and”; and

19 (2) by adding at the end the following new para-
20 graph:

21 “(5) The Federal Acquisition Regulation shall provide
22 that, in the case of a purchase of commercial items in an
23 amount greater than the simplified acquisition threshold,
24 an executive agency—

1 “(A) may not conduct the purchase on a sole
 2 source basis unless the need to do so is justified in
 3 writing and approved in accordance with the Federal
 4 Acquisition Regulation; and

5 “(B) shall include in the contract file a written
 6 description of the procedures used in awarding the
 7 contract and the number of offers received.”.

8 (c) *SIMPLIFIED NOTICE*.—Section 18 of the Office of
 9 Federal Procurement Policy Act (41 U.S.C. 416) is amend-
 10 ed—

11 (1) in subsection (a)(5) (as redesignated by sec-
 12 tion 101(c))—

13 (A) by striking out “limited”; and

14 (B) by inserting before “submission” the fol-
 15 lowing: “issuance of solicitations and the”; and

16 (2) in subsection (b)(6), by striking out “thresh-
 17 old—” and inserting in lieu thereof “threshold, or a
 18 contract for the procurement of commercial items
 19 using simplified procedures—”.

20 **SEC. 203. AMENDMENT TO DEFINITION OF COMMERCIAL**
 21 **ITEMS.**

22 Section 4(12)(F) of the Office of Federal Procurement
 23 Policy Act (41 U.S.C. 403(12)(F)) is amended by striking
 24 out “catalog”.

1 **SEC. 204. INAPPLICABILITY OF COST ACCOUNTING STAND-**
 2 **ARDS TO CONTRACTS AND SUBCONTRACTS**
 3 **FOR COMMERCIAL ITEMS.**

4 *Subparagraph (B) of section 26(f)(2) of the Office of*
 5 *Federal Procurement Policy Act (41 U.S.C. 422(f)(2)) is*
 6 *amended—*

7 *(1) by striking out clause (i) and inserting in*
 8 *lieu thereof the following:*

9 *“(i) Contracts or subcontracts for the acquisition*
 10 *of commercial items.”; and*

11 *(2) by striking out clause (iii).*

12 **TITLE III—ADDITIONAL REFORM**
 13 **PROVISIONS**

14 **SEC. 301. GOVERNMENT RELIANCE ON THE PRIVATE SEC-**
 15 **TOR.**

16 *(a) GOVERNMENT RELIANCE ON THE PRIVATE SEC-*
 17 *TOR.—The Office of Federal Procurement Policy Act (41*
 18 *U.S.C. 401 et seq.) is amended by inserting after section*
 19 *16 the following new section:*

20 **“SEC. 17. GOVERNMENT RELIANCE ON THE PRIVATE SEC-**
 21 **TOR.**

22 *“It is the policy of the Federal Government to rely on*
 23 *the private sector to supply the products and services the*
 24 *Federal Government needs.”.*

25 *(b) CLERICAL AMENDMENT.—The table of contents for*
 26 *the Office of Federal Procurement Policy Act (contained in*

1 *section 1(b)) is amended by inserting after the item relating*
 2 *to section 16 the following new item:*

“Sec. 17. Government reliance on the private sector.”.

3 **SEC. 302. ELIMINATION OF CERTAIN CERTIFICATION RE-**
 4 **QUIREMENTS.**

5 (a) *ELIMINATION OF CERTAIN STATUTORY CERTIFI-*
 6 *CATION REQUIREMENTS.—(1)(A) Section 2410 of title 10,*
 7 *United States Code, is amended—*

8 (i) *in the heading, by striking out “: **certifi-***
 9 ***cation**”;* and

10 (ii) *in subsection (a)—*

11 (I) *in the heading, by striking out “CER-*
 12 *TIFICATION”;*

13 (II) *by striking out “unless” and all that*
 14 *follows through “that—” and inserting in lieu*
 15 *thereof “unless—”;* and

16 (III) *in paragraph (2), by striking out “to*
 17 *the best of that person’s knowledge and belief”.*

18 (B) *The item relating to section 2410 in the table of*
 19 *sections at the beginning of chapter 141 of such title is*
 20 *amended to read as follows:*

“Sec. 2410. Requests for equitable adjustment or other relief.”.

21 (2) *Section 2410b of title 10, United States Code, is*
 22 *amended in paragraph (2) by striking out “certification*
 23 *and”.*

1 (3) *Section 1352(b)(2) of title 31, United States Code,*
 2 *is amended—*

3 (A) *by striking out subparagraph (C); and*

4 (B) *by inserting “and” after the semicolon at the*
 5 *end of subparagraph (A).*

6 (4) *Section 5152 of the Drug-Free Workplace Act of*
 7 *1988 (41 U.S.C. 701) is amended—*

8 (A) *in subsection (a)(1), by striking out “has*
 9 *certified to the contracting agency that it will” and*
 10 *inserting in lieu thereof “agrees to”;*

11 (B) *in subsection (a)(2), by striking out “con-*
 12 *tract includes a certification by the individual” and*
 13 *inserting in lieu thereof “individual agrees”;* and

14 (C) *in subsection (b)(1)—*

15 (i) *by striking out subparagraph (A);*

16 (ii) *by redesignating subparagraph (B) as*
 17 *subparagraph (A) and in that subparagraph by*
 18 *striking out “such certification by failing to*
 19 *carry out”;* and

20 (iii) *by redesignating subparagraph (C) as*
 21 *subparagraph (B).*

22 (b) *ELIMINATION OF CERTAIN REGULATORY CERTIFI-*
 23 *CATION REQUIREMENTS.—*

24 (1) *CURRENT CERTIFICATION REQUIREMENTS.—*

25 (A) *Not later than 210 days after the date of the en-*

1 *actment of this Act, any certification required of con-*
2 *tractors or offerors by the Federal Acquisition Regula-*
3 *tion that is not specifically imposed by statute shall*
4 *be removed by the Administrator for Federal Procure-*
5 *ment Policy from the Federal Acquisition Regulation*
6 *unless—*

7 *(i) written justification for such certifi-*
8 *cation is provided to the Administrator by the*
9 *Federal Acquisition Regulatory Council; and*

10 *(ii) the Administrator approves in writing*
11 *the retention of such certification.*

12 *(B)(i) Not later than 210 days after the date of*
13 *the enactment of this Act, any certification required*
14 *of contractors or offerors by a procurement regulation*
15 *of an executive agency that is not specifically imposed*
16 *by statute shall be removed by the head of the execu-*
17 *tive agency from such regulation unless—*

18 *(I) written justification for such certifi-*
19 *cation is provided to the head of the executive*
20 *agency by the senior procurement executive; and*

21 *(II) the head of the executive agency ap-*
22 *proves in writing the retention of such certifi-*
23 *cation.*

1 (ii) For purposes of clause (i), the term “head of
2 the executive agency” with respect to a military de-
3 partment means the Secretary of Defense.

4 (iii) The Secretary of Defense may delegate his
5 duties under this subparagraph only to the Under
6 Secretary of Defense for Acquisition and Technology.

7 (2) FUTURE CERTIFICATION REQUIREMENTS.—

8 (A) Section 29 of the Office of Federal Procurement
9 Policy Act (41 U.S.C. 425) is amended—

10 (i) by amending the heading to read as fol-
11 lows:

12 **“SEC. 29. CONTRACT CLAUSES AND CERTIFICATIONS.”;**

13 (ii) by inserting “(a) NONSTANDARD CON-
14 TRACT CLAUSES.—” before “The Federal Acqui-
15 sition”; and

16 (iii) by adding at the end the following new
17 subsection:

18 “(b) PROHIBITION ON CERTIFICATION REQUIRE-
19 MENTS.—(1) A requirement for a certification by a contrac-
20 tor or offeror may not be included in the Federal Acquisi-
21 tion Regulation unless—

22 “(A) the certification is specifically imposed by
23 statute; or

24 “(B) written justification for such certification is
25 provided to the Administrator for Federal Procure-

1 *ment Policy by the Federal Acquisition Regulatory*
2 *Council, and the Administrator approves in writing*
3 *the inclusion of such certification.*

4 *“(2)(A) A requirement for a certification by a contrac-*
5 *tor or offeror may not be included in a procurement regula-*
6 *tion of an executive agency unless—*

7 *“(i) the certification is specifically imposed by*
8 *statute; or*

9 *“(ii) written justification for such certification is*
10 *provided to the head of the executive agency by the*
11 *senior procurement executive of the agency, and the*
12 *head of the executive agency approves in writing the*
13 *inclusion of such certification.*

14 *“(B) For purposes of subparagraph (A), the term ‘head*
15 *of the executive agency’ with respect to a military depart-*
16 *ment means the Secretary of Defense.*

17 *“(C) The Secretary of Defense may delegate his duties*
18 *under this paragraph only to the Under Secretary of De-*
19 *fense for Acquisition and Technology.”.*

20 *(B) The item relating to section 29 in the table*
21 *of contents for the Office of Federal Procurement Pol-*
22 *icy Act (contained in section 1(b)) (41 U.S.C. 401*
23 *note) is amended to read as follows:*

“Sec. 29. Contract clauses and certifications.”.

1 **SEC. 303. AMENDMENT TO COMMENCEMENT AND EXPIRA-**
 2 **TION OF AUTHORITY TO CONDUCT CERTAIN**
 3 **TESTS OF PROCUREMENT PROCEDURES.**

4 *Subsection (j) of section 5061 of the Federal Acquisi-*
 5 *tion Streamlining Act of 1994 (41 U.S.C. 413 note) is*
 6 *amended to read as follows:*

7 *“(j) COMMENCEMENT AND EXPIRATION OF AUTHOR-*
 8 *ITY.—The authority to conduct a test under subsection (a)*
 9 *in an agency and to award contracts under such a test shall*
 10 *take effect on August 1, 1995, and shall expire on August*
 11 *1, 2000. Contracts entered into before such authority expires*
 12 *in an agency pursuant to a test shall remain in effect, not-*
 13 *withstanding the expiration of the authority to conduct the*
 14 *test under this section.”.*

15 **SEC. 304. INTERNATIONAL COMPETITIVENESS.**

16 *(a) REPEAL OF PROVISION RELATING TO RESEARCH,*
 17 *DEVELOPMENT, AND PRODUCTION COSTS.—*

18 *(1) Subject to paragraph (2), section 21(e) of the*
 19 *Arms Export Control Act (22 U.S.C. 2761(e)) is*
 20 *amended—*

21 *(A) by inserting “and” after the semicolon*
 22 *at the end of paragraph (1)(A);*

23 *(B) by striking out subparagraph (B) of*
 24 *paragraph (1);*

25 *(C) by redesignating subparagraph (C) of*
 26 *paragraph (1) as subparagraph (B);*

1 (D) by striking out paragraph (2); and

2 (E) by redesignating paragraph (3) as
3 paragraph (2).

4 (2) Paragraph (1) shall be effective only if—

5 (A) the President, in the budget of the
6 President for fiscal year 1997, proposes legisla-
7 tion that if enacted would be qualifying offset-
8 ting legislation; and

9 (B) there is enacted by October 1, 1996,
10 qualifying offsetting legislation.

11 (3) If the conditions in paragraph (2) are met,
12 then the amendments made by paragraph (1) shall
13 take effect on October 1, 1996.

14 (4) For purposes of this subsection:

15 (A) The term “qualifying offsetting legisla-
16 tion” means legislation that includes provisions
17 that—

18 (i) offset fully the estimated revenues
19 lost as a result of the amendments made by
20 paragraph (1) for each of the fiscal years
21 1997 through 2000;

22 (ii) expressly state that they are en-
23 acted for the purpose of the offset described
24 in clause (i); and

1 (iii) are included in full on the PayGo
2 scorecard.

3 (B) The term “PayGo scorecard” means the
4 estimates that are made with respect to fiscal
5 years through fiscal year 2000 by the Director of
6 the Congressional Budget Office and the Director
7 of the Office of Management and Budget under
8 section 252(d) of the Balanced Budget and
9 Emergency Deficit Control Act of 1985.

10 (b) *EFFECTIVE DATES.*—The amendments made by
11 subsection (a) shall be effective with respect to sales agree-
12 ments pursuant to sections 21 and 22 of the Arms Export
13 Control Act (22 U.S.C. 2761 and 2762) entered into during
14 the period beginning on October 1, 1996, and ending on
15 September 30, 2000.

16 **SEC. 305. PROCUREMENT INTEGRITY.**

17 (a) *AMENDMENT OF PROCUREMENT INTEGRITY PROVI-*
18 *SION.*—Section 27 of the Office of Federal Procurement Pol-
19 icy Act (41 U.S.C. 423) is amended to read as follows:

20 **“SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING**
21 **CONTRACTOR BID OR PROPOSAL INFORMA-**
22 **TION OR SOURCE SELECTION INFORMATION.**

23 “(a) *PROHIBITION ON DISCLOSING PROCUREMENT IN-*
24 *FORMATION.*—(1) A person described in paragraph (2) shall
25 not, other than as provided by law, knowingly disclose con-

1 *tractor bid or proposal information or source selection in-*
2 *formation before the award of a Federal agency procure-*
3 *ment contract to which the information relates.*

4 “(2) Paragraph (1) applies to any person who—

5 “(A) is a present or former officer or employee
6 of the United States, or a person who is acting or has
7 acted for or on behalf of, or who is advising or has
8 advised the United States with respect to, a Federal
9 agency procurement; and

10 “(B) by virtue of that office, employment, or re-
11 lationship has or had access to contractor bid or pro-
12 posal information or source selection information.

13 “(b) *PROHIBITION ON OBTAINING PROCUREMENT IN-*
14 *FORMATION.*—A person shall not, other than as provided
15 by law, knowingly obtain contractor bid or proposal infor-
16 mation or source selection information before the award of
17 a Federal agency procurement contract to which the infor-
18 mation relates.

19 “(c) *PROHIBITION ON DISCLOSING OR OBTAINING*
20 *PROCUREMENT INFORMATION IN CONNECTION WITH A*
21 *PROTEST.*—(1) A person shall not, other than as provided
22 by law, knowingly violate the terms of a protective order
23 described in paragraph (2) by disclosing or obtaining con-
24 tractor bid or proposal information or source selection in-
25 formation related to the procurement contract concerned.

1 “(2) Paragraph (1) applies to any protective order is-
2 sued by the Defense Board or the Civilian Board in connec-
3 tion with a protest against the award or proposed award
4 of a Federal agency procurement contract.

5 “(d) PENALTIES AND ADMINISTRATIVE ACTIONS.—

6 “(1) CRIMINAL PENALTIES.—

7 “(A) Whoever engages in conduct constitut-
8 ing an offense under subsection (a), (b), or (c)
9 shall be imprisoned for not more than one year
10 or fined as provided under title 18, United
11 States Code, or both.

12 “(B) Whoever engages in conduct constitut-
13 ing an offense under subsection (a), (b), or (c)
14 for the purpose of either—

15 “(i) exchanging the information cov-
16 ered by such subsection for anything of
17 value, or

18 “(ii) obtaining or giving anyone a
19 competitive advantage in the award of a
20 Federal agency procurement contract,
21 shall be imprisoned for not more than 15 years
22 or fined as provided under title 18, United
23 States Code, or both.

24 “(2) CIVIL PENALTIES.—The Attorney General
25 may bring a civil action in the appropriate United

1 *States district court against any person who engages*
2 *in conduct constituting an offense under subsection*
3 *(a), (b), or (c). Upon proof of such conduct by a pre-*
4 *ponderance of the evidence, the person is subject to a*
5 *civil penalty. An individual who engages in such con-*
6 *duct is subject to a civil penalty of not more than*
7 *\$50,000 for each violation plus twice the amount of*
8 *compensation which the individual received or offered*
9 *for the prohibited conduct. An organization that en-*
10 *gages in such conduct is subject to a civil penalty of*
11 *not more than \$500,000 for each violation plus twice*
12 *the amount of compensation which the organization*
13 *received or offered for the prohibited conduct.*

14 “(3) ADMINISTRATIVE ACTIONS.—(A) *If a Fed-*
15 *eral agency receives information that a contractor or*
16 *a person has engaged in conduct constituting an of-*
17 *fense under subsection (a), (b), or (c), the Federal*
18 *agency shall consider taking one or more of the fol-*
19 *lowing actions, as appropriate:*

20 “(i) *Cancellation of the Federal agency pro-*
21 *curement, if a contract has not yet been award-*
22 *ed.*

23 “(ii) *Rescission of a contract with respect to*
24 *which—*

1 “(I) the contractor or someone acting
2 for the contractor has been convicted for an
3 offense under subsection (a), (b), or (c), or

4 “(II) the head of the agency that
5 awarded the contract has determined, based
6 upon a preponderance of the evidence, that
7 the contractor or someone acting for the
8 contractor has engaged in conduct constitut-
9 ing such an offense.

10 “(iii) Initiation of suspension or debarment
11 proceedings for the protection of the Government
12 in accordance with procedures in the Federal Ac-
13 quisition Regulation.

14 “(iv) Initiation of adverse personnel action,
15 pursuant to the procedures in chapter 75 of title
16 5, United States Code, or other applicable law or
17 regulation.

18 “(B) If a Federal agency rescinds a contract
19 pursuant to subparagraph (A)(ii), the United States
20 is entitled to recover, in addition to any penalty pre-
21 scribed by law, the amount expended under the con-
22 tract.

23 “(C) For purposes of any suspension or debar-
24 ment proceedings initiated pursuant to subparagraph
25 (A)(iii), engaging in conduct constituting an offense

1 *under subsection (a), (b), or (c) affects the present re-*
2 *sponsibility of a Government contractor or sub-*
3 *contractor.*

4 “(e) *DEFINITIONS.—As used in this section:*

5 “(1) *The term ‘contractor bid or proposal infor-*
6 *mation’ means any of the following information sub-*
7 *mitted to a Federal agency as part of or in connec-*
8 *tion with a bid or proposal to enter into a Federal*
9 *agency procurement contract, if that information has*
10 *not been previously made available to the public or*
11 *disclosed publicly:*

12 “(A) *Cost or pricing data (as defined by*
13 *section 2306a(h) of title 10, United States Code,*
14 *with respect to procurements subject to that sec-*
15 *tion, and section 304A(h) of Federal Property*
16 *and Administrative Services Act of 1949 (41*
17 *U.S.C. 254b(h), with respect to procurements*
18 *subject to that section).*

19 “(B) *Indirect costs and direct labor rates.*

20 “(C) *Proprietary information about manu-*
21 *facturing processes, operations, or techniques*
22 *marked by the contractor in accordance with ap-*
23 *plicable law or regulation.*

1 “(D) Information marked by the contractor
2 as ‘contractor bid or proposal information’, in
3 accordance with applicable law or regulation.

4 “(2) The term ‘source selection information’
5 means any of the following information prepared for
6 use by a Federal agency for the purpose of evaluating
7 a bid or proposal to enter into a Federal agency pro-
8 curement contract, if that information has not been
9 previously made available to the public or disclosed
10 publicly:

11 “(A) Bid prices submitted in response to a
12 Federal agency solicitation for sealed bids, or
13 lists of those bid prices before public bid opening.

14 “(B) Proposed costs or prices submitted in
15 response to a Federal agency solicitation, or lists
16 of those proposed costs or prices.

17 “(C) Source selection plans.

18 “(D) Technical evaluation plans.

19 “(E) Technical evaluations of proposals.

20 “(F) Cost or price evaluations of proposals.

21 “(G) Competitive range determinations that
22 identify proposals that have a reasonable chance
23 of being selected for award of a contract.

24 “(H) Rankings of bids, proposals, or com-
25 petitors.

1 “(I) The reports and evaluations of source
2 selection panels, boards, or advisory councils.

3 “(J) Other information marked as ‘source
4 selection information’ based on a case-by-case de-
5 termination by the head of the agency, his des-
6 ignee, or the contracting officer that its disclo-
7 sure would jeopardize the integrity or successful
8 completion of the Federal agency procurement to
9 which the information relates.

10 “(3) The term ‘Federal agency’ has the meaning
11 provided such term in section 3 of the Federal Prop-
12 erty and Administrative Services Act of 1949 (40
13 U.S.C. 472).

14 “(4) The term ‘Federal agency procurement’
15 means the acquisition (by using competitive proce-
16 dures and awarding a contract) of goods or services
17 (including construction) from non-Federal sources by
18 a Federal agency using appropriated funds.

19 “(5) The term ‘contracting officer’ means a per-
20 son who, by appointment in accordance with applica-
21 ble regulations, has the authority to enter into a Fed-
22 eral agency procurement contract on behalf of the
23 Government and to make determinations and findings
24 with respect to such a contract.

1 “(6) The term ‘protest’ means a written objection
2 by an interested party to the award or proposed
3 award of a Federal agency procurement contract,
4 pursuant to title IV of the Federal Acquisition Re-
5 form Act of 1995.

6 “(f) *LIMITATION ON PROTESTS.*—No person may file
7 a protest against the award or proposed award of a Federal
8 agency procurement contract alleging an offense under sub-
9 section (a), (b), or (c), of this section, nor may the Defense
10 Board or the Civilian Board consider such an allegation
11 in deciding a protest, unless that person reported to the
12 Federal agency responsible for the procurement information
13 that the person believed constituted evidence of the offense
14 no later than 14 days after the person first discovered the
15 possible offense.

16 “(g) *SAVINGS PROVISIONS.*—This section does not—

17 “(1) restrict the disclosure of information to, or
18 its receipt by, any person or class of persons author-
19 ized, in accordance with applicable agency regula-
20 tions or procedures, to receive that information;

21 “(2) restrict a contractor from disclosing its own
22 bid or proposal information or the recipient from re-
23 ceiving that information;

24 “(3) restrict the disclosure or receipt of informa-
25 tion relating to a Federal agency procurement after

1 *it has been canceled by the Federal agency before con-*
2 *tract award unless the Federal agency plans to re-*
3 *sume the procurement;*

4 *“(4) prohibit individual meetings between a Fed-*
5 *eral agency employee and an offeror or potential*
6 *offeror for, or a recipient of, a contract or subcontract*
7 *under a Federal agency procurement, provided that*
8 *unauthorized disclosure or receipt of contractor bid or*
9 *proposal information or source selection information*
10 *does not occur;*

11 *“(5) authorize the withholding of information*
12 *from, nor restrict its receipt by, Congress, a commit-*
13 *tee or subcommittee of Congress, the Comptroller Gen-*
14 *eral, a Federal agency, or an inspector general of a*
15 *Federal agency;*

16 *“(6) authorize the withholding of information*
17 *from, nor restrict its receipt by, the Defense Board or*
18 *the Civilian Board in the course of a protest against*
19 *the award or proposed award of a Federal agency*
20 *procurement contract; or*

21 *“(7) limit the applicability of any requirements,*
22 *sanctions, contract penalties, and remedies established*
23 *under any other law or regulation.”.*

24 *(b) REPEALS.—The following provisions of law are re-*
25 *pealed:*

1 (1) *Sections 2397, 2397a, 2397b, and 2397c of*
2 *title 10, United States Code.*

3 (2) *Section 33 of the Federal Energy Adminis-*
4 *tration Act of 1974 (15 U.S.C. 789).*

5 (3) *Section 281 of title 18, United States Code.*

6 (4) *Subsection (c) of section 32 of the Office of*
7 *Federal Procurement Policy Act (41 U.S.C. 428).*

8 (5) *The first section 19 of the Federal Non-*
9 *nuclear Energy Research and Development Act of*
10 *1974 (42 U.S.C. 5918).*

11 (c) *CLERICAL AMENDMENTS.—*

12 (1) *The table of sections at the beginning of*
13 *chapter 141 of title 10, United States Code, is amend-*
14 *ed by striking out the items relating to sections 2397,*
15 *2397a, 2397b, and 2397c.*

16 (2) *The table of sections at the beginning of*
17 *chapter 15 of title 18, United States Code, is amended*
18 *by striking out the item relating to section 281.*

19 (3) *Section 32 of the Office of Federal Procure-*
20 *ment Policy Act (41 U.S.C. 428) is amended by redes-*
21 *ignating subsections (d), (e), (f), and (g) as sub-*
22 *sections (c), (d), (e), and (f), respectively.*

1 **SEC. 306. FURTHER ACQUISITION STREAMLINING PROVI-**
2 **SIONS.**

3 (a) *PURPOSE OF OFFICE OF FEDERAL PROCUREMENT*
4 *POLICY.*—(1) *Section 5(a) of the Office of Federal Procure-*
5 *ment Policy Act (41 U.S.C. 404) is amended to read as*
6 *follows:*

7 “(a) *To promote economy, efficiency, and effectiveness*
8 *in the procurement of property and services by the executive*
9 *branch of the Federal Government, there shall be an Office*
10 *of Federal Procurement Policy (hereinafter referred to as*
11 *the ‘Office’) in the Office of Management and Budget to pro-*
12 *vide overall direction of Government-wide procurement*
13 *policies, regulations, procedures, and forms for executive*
14 *agencies.’.*”

15 (2) *Sections 2 and 3 of such Act (41 U.S.C. 401 and*
16 *402) are repealed.*

17 (b) *REPEAL OF REPORT REQUIREMENT.*—*Section 8 of*
18 *the Office of Federal Procurement Policy Act (41 U.S.C.*
19 *407) is repealed.*

20 (c) *REPEAL OF OBSOLETE PROVISIONS.*—(1) *Sections*
21 *10 and 11 of the Office of Federal Procurement Policy Act*
22 *(41 U.S.C. 409 and 410) are repealed.*

23 (d) *CLERICAL AMENDMENTS.*—*The table of contents*
24 *for the Office of Federal Procurement Policy Act (contained*
25 *in section 1(b)) is amended by striking out the items relat-*
26 *ing to sections 2, 3, 8, 10, and 11.*

1 **SEC. 307. JUSTIFICATION OF MAJOR DEFENSE ACQUI-**
 2 **TION PROGRAMS NOT MEETING GOALS.**

3 *Section 2220(b) of title 10, United States Code, is*
 4 *amended by adding at the end the following: “In addition,*
 5 *the Secretary shall include in such annual report a jus-*
 6 *tification for the continuation of any program that—*

7 *“(1) is more than 50 percent over the cost goal*
 8 *established for the development, procurement, or oper-*
 9 *ational phase of the program;*

10 *“(2) fails to achieve at least 50 percent of the*
 11 *performance capability goals established for the devel-*
 12 *opment, procurement, or operational phase of the pro-*
 13 *gram; or*

14 *“(3) is more than 50 percent behind schedule, as*
 15 *determined in accordance with the schedule goal es-*
 16 *tablished for the development, procurement, or oper-*
 17 *ational phase of the program.”.*

18 **SEC. 308. ENHANCED PERFORMANCE INCENTIVES FOR AC-**
 19 **QUISITION WORKFORCE.**

20 *(a) ARMED SERVICES ACQUISITIONS.—Subsection (b)*
 21 *of section 5001 of the Federal Acquisition Streamlining Act*
 22 *of 1994 (Public Law 103–355; 108 Stat. 3350; 10 U.S.C.*
 23 *2220 note) is amended—*

24 *(1) by redesignating paragraphs (1) and (2) as*
 25 *subparagraphs (A) and (B), respectively;*

1 (2) by designating the second sentence as para-
2 graph (2);

3 (3) by inserting “(1)” after “(b) ENHANCED SYS-
4 TEM OF PERFORMANCE INCENTIVES.—”; and

5 (4) by adding at the end the following:

6 “(3) The Secretary shall include in the enhanced sys-
7 tem of incentives the following:

8 “(A) Pay bands.

9 “(B) Significant and material pay and pro-
10 motion incentives to be awarded, and significant and
11 material unfavorable personnel actions to be imposed,
12 under the system exclusively, or primarily, on the
13 basis of the contributions of personnel to the perform-
14 ance of the acquisition program in relation to cost
15 goals, performance goals, and schedule goals.

16 “(C) Provisions for pay incentives and pro-
17 motion incentives to be awarded under the system.”.

18 (b) CIVILIAN AGENCY ACQUISITIONS.—Subsection (c)
19 of section 5051 of the Federal Acquisition Streamlining Act
20 of 1994 (Public Law 103–355; 108 Stat. 3351; 41 U.S.C.
21 263 note) is amended—

22 (1) by redesignating subparagraphs (A) and (B)
23 of paragraph (2) as clauses (i) and (ii), respectively;

24 (2) by redesignating paragraphs (1) and (2) as
25 subparagraphs (A) and (B), respectively;

1 (3) by inserting “(1)” after “(c) *ENHANCED SYS-*
2 *TEM OF PERFORMANCE INCENTIVES.—*”; and

3 (4) by adding at the end the following:

4 “(2) *The Deputy Director shall include in the en-*
5 *hanced system of incentives under paragraph (1)(B) the fol-*
6 *lowing:*

7 “(A) *Pay bands.*

8 “(B) *Significant and material pay and pro-*
9 *motion incentives to be awarded, and significant and*
10 *material unfavorable personnel actions to be imposed,*
11 *under the system exclusively, or primarily, on the*
12 *basis of the contributions of personnel to the perform-*
13 *ance of the acquisition program in relation to cost*
14 *goals, performance goals, and schedule goals.*

15 “(C) *Provisions for pay incentives and pro-*
16 *motion incentives to be awarded under the system.”.*

17 **SEC. 309. RESULTS ORIENTED ACQUISITION PROGRAM**
18 **CYCLE.**

19 *Section 5002(a) of the Federal Acquisition Streamlin-*
20 *ing Act of 1994 (Public Law 103–355; 108 Stat. 3350) is*
21 *amended—*

22 (1) by inserting “(1)” before “to ensure”; and

23 (2) by striking out the period at the end and in-
24 serting in lieu thereof the following: “; (2) to ensure
25 that the regulations compress the time periods associ-

1 *ated with developing, procuring, and making oper-*
 2 *ational new systems; and (3) to ensure that Depart-*
 3 *ment of Defense directives relating to development*
 4 *and procurement of information systems (numbered*
 5 *in the 8000 series) and the Department of Defense di-*
 6 *rectives numbered in the 5000 series are consolidated*
 7 *into one series of directives that is consistent with*
 8 *such compressed time periods.”.*

9 **SEC. 310. RAPID CONTRACTING GOAL.**

10 *(a) GOAL.—The Office of Federal Procurement Policy*
 11 *Act, as amended by section 106, is further amended by add-*
 12 *ing at the end the following new section:*

13 **“SEC. 36. RAPID CONTRACTING GOAL.**

14 *“The Administrator for Federal Procurement Policy*
 15 *shall establish a goal of reducing by 50 percent the time*
 16 *necessary for executive agencies to acquire an item for the*
 17 *user of that item.”.*

18 *(b) CLERICAL AMENDMENT.—The table of contents for*
 19 *such Act, contained in section 1(b), is amended by adding*
 20 *at the end the following new item:*

“Sec. 36. Rapid contracting goal.”.

21 **SEC. 311. ENCOURAGEMENT OF MULTIYEAR CONTRACTING.**

22 *(a) ARMED SERVICES ACQUISITIONS.—Section*
 23 *2306b(a) of title 10, United States Code, is amended in the*
 24 *matter preceding paragraph (1) by striking out “may” and*

1 *inserting in lieu thereof “shall, to the maximum extent pos-*
 2 *sible.”.*

3 (b) *CIVILIAN AGENCY ACQUISITIONS.—Section*
 4 *304B(a) of the Federal Property and Administrative Serv-*
 5 *ices Act of 1949 (41 U.S.C. 254c(a)) is amended in the mat-*
 6 *ter preceding paragraph (1) by striking out “may” and in-*
 7 *serting in lieu thereof “shall, to the maximum extent pos-*
 8 *sible.”.*

9 **SEC. 312. CONTRACTOR SHARE OF GAINS AND LOSSES**
 10 **FROM COST, SCHEDULE, AND PERFORMANCE**
 11 **EXPERIENCE.**

12 (a) *ARMED SERVICES ACQUISITIONS.—(1) Chapter*
 13 *137 of title 10, United States Code, is amended by inserting*
 14 *after section 2306b the following new section:*

15 **“§2306c. Contractor share of gains and losses from**
 16 **cost, schedule, and performance experi-**
 17 **ence**

18 *“The Federal Acquisition Regulation shall contain*
 19 *provisions to ensure that, for any cost-type contract or in-*
 20 *centive-type contract, the contractor may be rewarded for*
 21 *contract performance exceeding the contract cost, schedule,*
 22 *or performance parameters to the benefit of the United*
 23 *States and may be penalized for failing to adhere to cost,*
 24 *schedule, or performance parameters to the detriment of the*
 25 *United States.”.*

1 (2) *The table of sections at the beginning of such chap-*
 2 *ter is amended by inserting after the item relating to section*
 3 *2306b the following new item:*

“2306c. Contractor share of gains and losses from cost, schedule, and performance experience.”.

4 (b) *CIVILIAN AGENCY ACQUISITIONS.—(1) Title III of*
 5 *the Federal Property and Administrative Services Act of*
 6 *1949 (41 U.S.C. 251 et seq.) is amended by inserting after*
 7 *section 304C the following new section:*

8 ***“SEC. 304D. CONTRACTOR SHARE OF GAINS AND LOSSES***
 9 ***FROM COST, SCHEDULE, AND PERFORMANCE***
 10 ***EXPERIENCE.***

11 *“The Federal Acquisition Regulation shall contain*
 12 *provisions to ensure that, for any cost-type contract or in-*
 13 *centive-type contract, the contractor may be rewarded for*
 14 *contract performance exceeding the contract cost, schedule,*
 15 *or performance parameters to the benefit of the United*
 16 *States and may be penalized for failing to adhere to cost,*
 17 *schedule, or performance parameters to the detriment of the*
 18 *United States.”.*

19 (2) *The table of contents for such Act, contained in*
 20 *section 1(b), is amended by inserting after the item relating*
 21 *to section 304C the following new item:*

“Sec. 304D. Contractor share of gains and losses from cost, schedule, and performance experience.”.

1 **SEC. 313. PHASE FUNDING OF DEFENSE ACQUISITION PRO-**
 2 **GRAMS.**

3 *Chapter 131 of title 10, United States Code, is amend-*
 4 *ed by adding at the end the following new section:*

5 **“§2221. Funding for results oriented acquisition pro-**
 6 **gram cycle**

7 *“Before initial funding is made available for the devel-*
 8 *opment, procurement, or operational phase of an acquisi-*
 9 *tion program for which an authorization of appropriations*
 10 *is required by section 114 of this title, the Secretary of De-*
 11 *fense shall submit to Congress information about the objec-*
 12 *tives and plans for the conduct of that phase and the fund-*
 13 *ing requirements for the entire phase. The information shall*
 14 *identify the intended user of the system to be acquired under*
 15 *the program and shall include objective, quantifiable cri-*
 16 *teria for assessing the extent to which the objectives and*
 17 *goals determined pursuant to section 2435 of this title are*
 18 *achieved.”.*

19 *(2) The table of sections at the beginning of such chap-*
 20 *ter is amended by adding at the end the following new item:*
“2221. Funding for results oriented acquisition program cycle.”.

21 **SEC. 314. IMPROVED DEPARTMENT OF DEFENSE CONTRACT**
 22 **PAYMENT PROCEDURES.**

23 *(a) REVIEW AND IMPROVEMENT OF PROCEDURES.—*
 24 *The Comptroller General of the United States shall review*
 25 *commercial practices regarding accounts payable and, con-*

1 *sidering the results of the review, develop standards for the*
 2 *Secretary of Defense to consider using for improving the*
 3 *contract payment procedures and financial management*
 4 *systems of the Department of Defense.*

5 *(b) GAO REPORT.—Not later than September 30,*
 6 *1996, the Comptroller General shall submit to Congress a*
 7 *report containing the following matters:*

8 *(1) The weaknesses in the financial management*
 9 *processes of the Department of Defense.*

10 *(2) Deviations of the Department of Defense pay-*
 11 *ment procedures and financial management systems*
 12 *from the standards developed pursuant to subsection*
 13 *(a), expressed quantitatively.*

14 *(3) The officials of the Department of Defense*
 15 *who are responsible for resolving the deviations.*

16 ***SEC. 315. CONSIDERATION OF PAST PERFORMANCE IN AS-***
 17 ***SIGNMENT TO ACQUISITION POSITIONS.***

18 *(a) REQUIREMENT.—Section 1701(a) of title 10,*
 19 *United States Code, is amended by adding at the end the*
 20 *following: “The policies and procedures shall provide that*
 21 *education and training in acquisition matters, and past*
 22 *performance of acquisition responsibilities, are major fac-*
 23 *tors in the selection of personnel for assignment to acquisi-*
 24 *tion positions in the Department of Defense.”.*

1 (b) *PERFORMANCE REQUIREMENTS FOR ASSIGN-*
2 *MENT.—(1) Section 1723(a) of title 10, United States Code,*
3 *is amended by inserting “, including requirements relating*
4 *to demonstrated past performance of acquisition duties,” in*
5 *the first sentence after “experience requirements”.*

6 (2) *Section 1724(a)(2) of such title is amended by in-*
7 *serting before the semicolon at the end the following: “and*
8 *have demonstrated proficiency in the performance of acqui-*
9 *sition duties in the contracting position or positions pre-*
10 *viously held”.*

11 (3) *Section 1735 of such title is amended—*

12 (A) *in subsection (b)—*

13 (i) *by striking out “and” at the end of*
14 *paragraph (2);*

15 (ii) *by striking out the period at the end of*
16 *paragraph (3) and inserting in lieu thereof “;*
17 *and”; and*

18 (iii) *by adding at the end the following:*

19 “(4) *must have demonstrated proficiency in the*
20 *performance of acquisition duties.”;*

21 (B) *in subsection (c)—*

22 (i) *by striking out “and” at the end of*
23 *paragraph (2);*

1 (ii) by striking out the period at the end of
2 paragraph (3) and inserting in lieu thereof “;
3 and”; and

4 (iii) by adding at the end the following:

5 “(4) must have demonstrated proficiency in the
6 performance of acquisition duties.”;

7 (C) in subsection (d), by inserting before the pe-
8 riod at the end the following: “; and have dem-
9 onstrated proficiency in the performance of acquisi-
10 tion duties”; and

11 (D) in subsection (e), by inserting before the pe-
12 riod at the end the following: “; and have dem-
13 onstrated proficiency in the performance of acquisi-
14 tion duties”.

15 **SEC. 316. ADDITIONAL DEPARTMENT OF DEFENSE PILOT**
16 **PROGRAMS.**

17 (a) *ADDITIONAL PROGRAM AUTHORIZED FOR PAR-*
18 *TICIPATION IN DEFENSE ACQUISITION PILOT PROGRAM.—*
19 *Section 5064 of the Federal Acquisition Streamlining Act*
20 *of 1994 (P.L. 103–355; 108 Stat. 3359) is amended as fol-*
21 *lows:*

22 (1) Subsection (a) is amended by adding at the
23 end the following new paragraph:

24 “(6) *JOINT STANDOFF WEAPON UNITARY VARIANT*
25 *(JSOW-UV).—The Joint Standoff Weapon Unitary*

1 *Variant program with respect to all contracts directly*
2 *related to the development and procurement of an air-*
3 *delivered, standoff weapon that incorporates a global*
4 *positioning system-aided inertial navigation system,*
5 *a data link capability, and a unitary warhead.”.*

6 *(2) Subsection (c) is amended—*

7 *(A) by striking out “and” at the end of*
8 *paragraph (1);*

9 *(B) by striking out the period at the end of*
10 *paragraph (2) and inserting in lieu thereof “;*
11 *and”; and*

12 *(C) by adding at the end the following new*
13 *paragraph:*

14 *“(3) with respect to the program described in*
15 *subsection (a)(6)—*

16 *“(A) to apply any amendment or repeal of*
17 *a provision of law made in the Federal Acquisi-*
18 *tion Reform Act of 1995 to the pilot program be-*
19 *fore the effective date of such amendment or re-*
20 *peal; and*

21 *“(B) to apply to a procurement of items*
22 *other than commercial items under such pro-*
23 *gram any waiver or exception applicable under*
24 *the Federal Acquisition Streamlining Act of*
25 *1994 (Public Law 103–355) or the Federal Ac-*

1 *quisition Reform Act of 1995 (or an amendment*
2 *made by a provision of either Act) in the case*
3 *of commercial items before the effective date of*
4 *such provision (or amendment), to the extent*
5 *that the Secretary determines necessary to test*
6 *the application of such waiver or exception to*
7 *procurements of items other than commercial*
8 *items.”.*

9 *(b) DEFENSE ACQUISITION FACILITY-WIDE PILOT*
10 *PROGRAM.—*

11 *(1) AUTHORITY TO CONDUCT FACILITY-WIDE*
12 *PILOT PROGRAM.—The Secretary of Defense may con-*
13 *duct a pilot program, to be known as the “defense fa-*
14 *cility-wide pilot program”, for the purpose of deter-*
15 *mining the potential for increasing the efficiency and*
16 *effectiveness of the acquisition process in facilities.*

17 *(2) SCOPE OF PROGRAM.—At a facility des-*
18 *ignated as a participant in the pilot program, the*
19 *pilot program shall consist of the following:*

20 *(A) All contracts and subcontracts for de-*
21 *fense supplies and services that are performed at*
22 *the facility.*

23 *(B) All contracts and subcontracts per-*
24 *formed elsewhere that the Secretary determines*
25 *are directly and substantially related to the pro-*

1 *duction of defense supplies and services at the fa-*
2 *cility and are necessary for the pilot program.*

3 (3) *DESIGNATION OF PARTICIPATING FACILI-*
4 *TIES.—(A) The Secretary may designate up to three*
5 *facilities as participants in the defense facility-wide*
6 *pilot program.*

7 (B) *Subject to paragraph (7), the Secretary may*
8 *determine the scope and duration of a designation*
9 *made under this paragraph.*

10 (4) *CRITERIA FOR DESIGNATION.—The Secretary*
11 *may designate a facility under paragraph (3) only if*
12 *the Secretary determines that all or substantially all*
13 *of the contracts to be awarded and performed at the*
14 *facility after the designation, and all or substantially*
15 *all of the subcontracts to be awarded under those con-*
16 *tracts and performed at the facility after the designa-*
17 *tion, will be—*

18 (A) *for the production of supplies or services*
19 *on a firm-fixed price basis;*

20 (B) *awarded without requiring the contrac-*
21 *tors or subcontractors to provide certified cost or*
22 *pricing data pursuant to section 2306a of title*
23 *10, United States Code; and*

24 (C) *awarded and administered without the*
25 *application of cost accounting standards under*

1 *section 26(f) of the Office of Federal Procurement*
2 *Policy Act (41 U.S.C. 422(f)).*

3 (5) *EXEMPTION FROM CERTAIN REQUIRE-*
4 *MENTS.—In the case of a contract or subcontract that*
5 *is to be performed at a facility designated for partici-*
6 *pation in the defense facility-wide pilot program and*
7 *that is subject to section 2306a of title 10, United*
8 *States Code, or section 26(f) of the Office of Federal*
9 *Procurement Policy Act (41 U.S.C. 422(f)), the Sec-*
10 *retary of Defense may exempt such contract or sub-*
11 *contract from the requirement to obtain certified cost*
12 *or pricing data under such section 2306a or the re-*
13 *quirement to apply mandatory cost accounting stand-*
14 *ards under such section 26(f) if the Secretary deter-*
15 *mines that the contract or subcontract—*

16 (A) *is within the scope of the pilot program*
17 (as described in paragraph (2)); and

18 (B) *is fairly and reasonably priced based*
19 *on information other than certified cost and*
20 *pricing data.*

21 (6) *SPECIAL AUTHORITY.—The authority pro-*
22 *vided under paragraph (1) may include authority for*
23 *the Secretary of Defense—*

24 (A) *to apply any amendment or repeal of a*
25 *provision of law made in this Act to the pilot*

1 *program before the effective date of such amend-*
2 *ment or repeal; and*

3 *(B) to apply to a procurement of items*
4 *other than commercial items under such pro-*
5 *gram—*

6 *(i) any authority provided in the Fed-*
7 *eral Acquisition Streamlining Act of 1994*
8 *(Public Law 103–355) (or in an amend-*
9 *ment made by a provision of that Act) to*
10 *waive a provision of law in the case of com-*
11 *mercial items, and*

12 *(ii) any exception applicable under*
13 *this Act or the Federal Acquisition Stream-*
14 *lining Act of 1994 (Public Law 103–355)*
15 *(or an amendment made by a provision of*
16 *either Act) in the case of commercial items,*
17 *before the effective date of such provision (or*
18 *amendment) to the extent that the Secretary de-*
19 *termines necessary to test the application of such*
20 *waiver or exception to procurements of items*
21 *other than commercial items.*

22 *(7) APPLICABILITY.—(A) Paragraphs (5) and*
23 *(6) apply with respect to—*

1 (i) a contract that is awarded or modified
2 during the period described in subparagraph
3 (B); and

4 (ii) a contract that is awarded before the be-
5 ginning of such period and is to be performed
6 (or may be performed), in whole or in part, dur-
7 ing such period.

8 (B) The period referred to in subparagraph (A)
9 is the period that begins 45 days after the date of the
10 enactment of this Act and ends on September 30,
11 1998.

12 (8) *COMMERCIAL PRACTICES ENCOURAGED.*—
13 With respect to contracts and subcontracts within the
14 scope of the defense facility-wide pilot program, the
15 Secretary of Defense may, to the extent the Secretary
16 determines appropriate and in accordance with the
17 law, adopt commercial practices in the administra-
18 tion of contracts and subcontracts. Such commercial
19 practices may include elimination of Government
20 audit and access to records provisions; incorporation
21 of commercial oversight, inspection, and acceptance
22 procedures; use of alternative dispute resolution tech-
23 niques (including arbitration); and elimination of
24 contract provisions authorizing the Government to
25 make unilateral changes to contracts.

1 **SEC. 317. VALUE ENGINEERING FOR FEDERAL AGENCIES.**

2 (a) *USE OF VALUE ENGINEERING.*—The Office of Fed-
3 eral Procurement Policy Act (41 U.S.C. 401 et seq.), as
4 amended by section 310, is further amended by adding at
5 the end the following new section:

6 **“SEC. 37. VALUE ENGINEERING.**

7 “(a) *IN GENERAL.*—Each executive agency shall estab-
8 lish and maintain effective value engineering procedures
9 and processes.

10 “(b) *THRESHOLD.*—The procedures and processes es-
11 tablished pursuant to subsection (a) shall be applied to those
12 programs, projects, systems, and products of an executive
13 agency that, in a ranking of all programs, projects, systems,
14 and products of the agency according to greatest dollar
15 value, are within the highest 20th percentile.

16 “(c) *DEFINITION.*—As used in this section, the term
17 ‘value engineering’ means a team effort, performed by
18 qualified agency or contractor personnel, directed at ana-
19 lyzing the functions of a program, project, system, product,
20 item of equipment, building, facility, service, or supply for
21 the purpose of achieving the essential functions at the lowest
22 life-cycle cost that is consistent with required or improved
23 performance, reliability, quality, and safety.’”.

1 (b) *CLERICAL AMENDMENT.*—*The table of contents for*
 2 *such Act, contained in section 1(b), is amended by adding*
 3 *at the end the following new item:*

“Sec. 37. Value engineering.”.

4 ***SEC. 318. ACQUISITION WORKFORCE.***

5 (a) *ACQUISITION WORKFORCE.*—(1) *The Office of Fed-*
 6 *eral Procurement Policy Act (41 U.S.C. 401 et seq.), as*
 7 *amended by section 317, is further amended by adding at*
 8 *the end the following new section:*

9 ***“SEC. 38. ACQUISITION WORKFORCE.***

10 “(a) *APPLICABILITY.*—*This section does not apply to*
 11 *an executive agency that is subject to chapter 87 of title*
 12 *10, United States Code.*

13 “(b) *MANAGEMENT POLICIES.*—

14 “(1) *POLICIES AND PROCEDURES.*—*The head of*
 15 *each executive agency, after consultation with the Ad-*
 16 *ministrator for Federal Procurement Policy, shall es-*
 17 *tablish policies and procedures for the effective man-*
 18 *agement (including accession, education, training, ca-*
 19 *reer development, and performance incentives) of the*
 20 *acquisition workforce of the agency. The development*
 21 *of acquisition workforce policies under this section*
 22 *shall be carried out consistent with the merit system*
 23 *principles set forth in paragraphs (1) and (2) of sec-*
 24 *tion 2301(b) of title 5, United States Code.*

1 “(2) *UNIFORM IMPLEMENTATION.*—The head of
2 each executive agency shall ensure that, to the maxi-
3 mum extent practicable, acquisition workforce policies
4 and procedures established are uniform in their im-
5 plementation throughout the agency.

6 “(3) *GOVERNMENT-WIDE POLICIES AND EVALUA-*
7 *TION.*—The Administrator shall issue policies to pro-
8 mote uniform implementation of this section by exec-
9 utive agencies, with due regard for differences in pro-
10 gram requirements among agencies that may be ap-
11 propriate and warranted in view of the agency mis-
12 sion. The Administrator shall coordinate with the
13 Deputy Director for Management of the Office of
14 Management and Budget to ensure that such policies
15 are consistent with the policies and procedures estab-
16 lished and enhanced system of incentives provided
17 pursuant to section 5051(c) of the Federal Acquisition
18 Streamlining Act of 1994 (41 U.S.C. 263 note). The
19 Administrator shall evaluate the implementation of
20 the provisions of this section by executive agencies.

21 “(c) *SENIOR PROCUREMENT EXECUTIVE AUTHORITIES*
22 *AND RESPONSIBILITIES.*—Subject to the authority, direc-
23 tion, and control of the head of an executive agency, the
24 senior procurement executive of the agency shall carry out
25 all powers, functions, and duties of the head of the agency

1 *with respect to implementation of this section. The senior*
 2 *procurement executive shall ensure that the policies of the*
 3 *head of the executive agency established in accordance with*
 4 *this section are implemented throughout the agency.*

5 “(d) *MANAGEMENT INFORMATION SYSTEMS.*—*The Ad-*
 6 *ministrators shall ensure that the heads of executive agencies*
 7 *collect and maintain standardized information on the ac-*
 8 *quisition workforce related to implementation of this sec-*
 9 *tion. To the maximum extent practicable, such data re-*
 10 *quirements shall conform to standards established by the Of-*
 11 *fice of Personnel Management for the Central Personnel*
 12 *Data File.*

13 “(e) *ACQUISITION WORKFORCE.*—*The programs estab-*
 14 *lished by this section shall apply to all employees in the*
 15 *General Schedule Contracting series (GS-1102) and the*
 16 *General Schedule Purchasing series (GS-1105), and to any*
 17 *employees regardless of series who have been appointed as*
 18 *contracting officers whose authority exceeds the micro-pur-*
 19 *chase threshold, as that term is defined in section 32(g).*
 20 *The head of each executive agency may include employees*
 21 *in other series who perform acquisition or acquisition-relat-*
 22 *ed functions.*

23 “(f) *CAREER DEVELOPMENT.*—

24 “(1) *CAREER PATHS.*—*The head of each execu-*
 25 *tive agency shall ensure that appropriate career paths*

1 *for personnel who desire to pursue careers in acquisi-*
2 *tion are identified in terms of the education, training,*
3 *experience, and assignments necessary for career pro-*
4 *gression to the most senior acquisition positions. The*
5 *head of each executive agency shall make information*
6 *available on such career paths.*

7 “(2) *CRITICAL DUTIES AND TASKS.—For each*
8 *career path, the head of each executive agency shall*
9 *identify the critical acquisition-related duties and*
10 *tasks in which, at minimum, employees of the agency*
11 *in the career path shall be competent to perform at*
12 *full performance grade levels. For this purpose, the*
13 *head of the executive agency shall provide appropriate*
14 *coverage of the critical duties and tasks identified by*
15 *the Director of the Federal Acquisition Institute.*

16 “(3) *MANDATORY TRAINING AND EDUCATION.—*
17 *For each career path, the head of each executive agen-*
18 *cy shall establish requirements for the completion of*
19 *course work and related on-the-job training in the*
20 *critical acquisition-related duties and tasks of the ca-*
21 *reer path. The head of each executive agency shall also*
22 *encourage employees to maintain the currency of their*
23 *acquisition knowledge and generally enhance their*
24 *knowledge of related acquisition management dis-*

1 *ciplines through academic programs and other self-de-*
 2 *velopmental activities.*

3 “(4) *PERFORMANCE INCENTIVES.*—The head of
 4 *each executive agency, acting through the senior pro-*
 5 *curement executive for the agency, shall provide for*
 6 *an enhanced system of incentives for the encourage-*
 7 *ment of excellence in the acquisition workforce which*
 8 *rewards performance of employees that contribute to*
 9 *achieving the agency’s performance goals. The system*
 10 *of incentives shall include provisions that—*

11 “(A) *relate pay to performance;*

12 “(B) *provide for consideration, in personnel*
 13 *evaluations and promotion decisions, of the ex-*
 14 *tent to which the performance of personnel con-*
 15 *tributed to achieving the agency’s performance*
 16 *goals; and*

17 “(C) *provide pay and promotion incentives*
 18 *to be awarded, and unfavorable personnel actions*
 19 *to be imposed, under the system on the basis of*
 20 *the contributions of personnel to achieving the*
 21 *agency’s performance goals.*

22 “(g) *QUALIFICATION REQUIREMENTS.*—

23 “(1) *GENERAL SCHEDULE CONTRACTING SERIES*
 24 *(GS-1102).*—

1 “(A) *ENTRY LEVEL QUALIFICATIONS.*—The
2 *Director of the Office of Personnel Management*
3 *shall require that, after October 1, 1996, a per-*
4 *son may not be appointed to a position in the*
5 *GS-1102 occupational series unless the person—*

6 “(i) *has received a baccalaureate degree*
7 *from an accredited educational institution*
8 *authorized to grant baccalaureate degrees,*

9 “(ii) *has completed at least 24 semester*
10 *credit hours (or the equivalent) of study*
11 *from an accredited institution of higher*
12 *education in any of the following dis-*
13 *ciplines: accounting, business finance, law,*
14 *contracts, purchasing, economics, industrial*
15 *management, marketing, quantitative meth-*
16 *ods, or organization and management, or*

17 “(iii) *has passed a written test deter-*
18 *mined by the Administrator for Federal*
19 *Procurement Policy, after consultation with*
20 *the Director of the Office of Personnel Man-*
21 *agement, to demonstrate the judgmental*
22 *skills necessary for positions in this series.*

23 “(B) *QUALIFICATIONS FOR SENIOR CON-*
24 *TRACTING POSITIONS.*—The *Director of the Office*
25 *of Personnel Management shall require that,*

1 *after October 1, 1996, persons may be appointed*
2 *to positions at and above full performance grade*
3 *levels in the GS-1102 occupational series only if*
4 *those persons—*

5 “(i) *have satisfied the educational re-*
6 *quirement either of subparagraph (A)(i) or*
7 *(A)(ii),*

8 “(ii) *have successfully completed all*
9 *training required for the position under*
10 *subsection (f)(3), and*

11 “(iii) *have satisfied experience and*
12 *other requirements established by the Direc-*
13 *tor for such positions.*

14 *However, this requirement shall apply to persons*
15 *employed on October 1, 1996, in GS-1102 posi-*
16 *tions at those grade levels only as a prerequisite*
17 *for promotion to a GS-1102 position at a higher*
18 *grade.*

19 “(2) *GENERAL SCHEDULE PURCHASING SERIES*
20 *(GS-1105).—The Director of the Office of Personnel*
21 *Management shall require that, after October 1, 1996,*
22 *a person may not be appointed to a position in the*
23 *GS-1105 occupational series unless the person—*

1 “(A) has successfully completed 2 years of
2 course work from an accredited educational in-
3 stitution authorized to grant degrees, or

4 “(B) has passed a written test determined
5 by the Administrator for Federal Procurement
6 Policy, after consultation with the Director of the
7 Office of Personnel Management, to demonstrate
8 the judgmental skills necessary for positions in
9 this series.

10 “(3) *CONTRACTING OFFICERS.*—The head of each
11 executive agency shall require that, beginning after
12 October 1, 1996, a person may be appointed as a con-
13 tracting officer with authority to award or admin-
14 ister contracts for amounts above the micro-purchase
15 threshold, as that term is defined in section 32(g),
16 only if the person—

17 “(A) has successfully completed all manda-
18 tory training required of an employee in an
19 equivalent GS-1102 or 1105 position under sub-
20 section (f)(3); and

21 “(B) meets experience and other require-
22 ments established by the head of the agency,
23 based on the dollar value and complexity of the
24 contracts that the employee will be authorized to

1 *award or administer under the appointment as*
2 *a contracting officer.*

3 “(4) *EXCEPTIONS.—(A) The requirements set*
4 *forth in paragraphs (1) and (2), as applicable, shall*
5 *not apply to any person employed in the GS-1102 or*
6 *GS-1105 series on October 1, 1996.*

7 “(B) *Employees of an executive agency who do*
8 *not satisfy the full qualification requirements for ap-*
9 *pointment as a contracting officer under paragraph*
10 *(3) may be appointed as a contracting officer for a*
11 *temporary period of time under procedures established*
12 *by the agency head. The procedures shall—*

13 “(i) *require that the person have completed*
14 *a significant portion of the required training,*

15 “(ii) *require a plan be established for the*
16 *balance of the required training,*

17 “(iii) *specify a period of time for comple-*
18 *tion of the training, and*

19 “(iv) *include provisions for withdrawing or*
20 *terminating the appointment prior to the sched-*
21 *uled expiration date, where appropriate.*

22 “(5) *WAIVER.—The senior procurement executive*
23 *for an executive agency may waive any or all of the*
24 *qualification requirements of paragraphs (1) and (2)*
25 *for a person if the person possesses significant poten-*

1 *tial for advancement to levels of greater responsibility*
 2 *and authority, based on demonstrated job perform-*
 3 *ance and qualifying experience. This authority may*
 4 *not be redelegated by the senior procurement execu-*
 5 *tive. With respect to each waiver granted under this*
 6 *subsection, the senior procurement executive shall set*
 7 *forth in writing the rationale for the decision to*
 8 *waive such requirements.*

9 “(h) *PROGRAM ESTABLISHMENT AND IMPLEMENTA-*
 10 *TION.—*

11 “(1) *FUNDING LEVELS.—(A) The head of an ex-*
 12 *ecutive agency shall request in the budget for a fiscal*
 13 *year for the agency—*

14 “(i) *for education and training under this*
 15 *section, an amount equal to no less than 2.5 per-*
 16 *cent of the base aggregate salary cost of the ac-*
 17 *quisition workforce subject to this section for that*
 18 *fiscal year; and*

19 “(ii) *for salaries of the acquisition*
 20 *workforce, an amount equal to no more than*
 21 *97.5 percent of such base aggregate salary cost.*

22 “(B) *The head of the executive agency shall set*
 23 *forth separately the funding levels requested in the*
 24 *budget justification documents submitted in support*

1 *of the President's budget submitted to Congress under*
2 *section 1105 of title 31, United States Code.*

3 “(C) *Funds appropriated for education and*
4 *training under this section may not be obligated or*
5 *used for any other purpose.*

6 “(2) *INTERAGENCY AGREEMENTS.—The head of*
7 *an executive agency may enter into a written agree-*
8 *ment with another agency to participate in programs*
9 *established under this section on a reimbursable basis.*

10 “(3) *TUITION ASSISTANCE.—Notwithstanding the*
11 *prohibition in section 4107(b) of title 5, United States*
12 *Code, the head of each executive agency may provide*
13 *for tuition reimbursement and education (including a*
14 *full-time course of study leading to a degree) for ac-*
15 *quisition personnel in the agency related to the pur-*
16 *poses of this section.*

17 “(4) *INTERN PROGRAMS.—The head of each exec-*
18 *utive agency may establish intern programs in order*
19 *to recruit highly qualified and talented individuals*
20 *and provide them with opportunities for accelerated*
21 *promotions, career broadening assignments, and spec-*
22 *ified training for advancement to senior acquisition*
23 *positions. For such programs, the head of an executive*
24 *agency, without regard to the provisions of title 5,*
25 *United States Code, may appoint individuals to com-*

1 *petitive GS-5, GS-7, or GS-9 positions in the Gen-*
2 *eral Schedule Contracting series (GS-1102) who have*
3 *graduated from baccalaureate or master's programs*
4 *in purchasing or contracting from accredited edu-*
5 *cational institutions authorized to grant bacca-*
6 *laureate and master's degrees.*

7 “(5) *COOPERATIVE EDUCATION PROGRAM.*—The
8 *head of each executive agency may establish an agen-*
9 *cywide cooperative education credit program for ac-*
10 *quisition positions. Under the program, the head of*
11 *the executive agency may enter into cooperative ar-*
12 *rangements with one or more accredited institutions*
13 *of higher education which provide for such institu-*
14 *tions to grant undergraduate credit for work per-*
15 *formed in such position.*

16 “(6) *SCHOLARSHIP PROGRAM.*—

17 “(A) *ESTABLISHMENT.*—Where deemed ap-
18 *propriate, the head of each executive agency may*
19 *establish a scholarship program for the purpose*
20 *of qualifying individuals for acquisition posi-*
21 *tions in the agency.*

22 “(B) *ELIGIBILITY.*—To be eligible to par-
23 *ticipate in a scholarship program established*
24 *under this paragraph by an executive agency, an*
25 *individual must—*

1 “(i) be accepted for enrollment or be
2 currently enrolled as a full-time student at
3 an accredited educational institution au-
4 thorized to grant baccalaureate or graduate
5 degrees (as appropriate);

6 “(ii) be pursuing a course of education
7 that leads toward completion of a bachelor’s,
8 master’s, or doctor’s degree (as appropriate)
9 in a qualifying field of study, as determined
10 by the head of the agency;

11 “(iii) sign an agreement described in
12 subparagraph (C) under which the partici-
13 pant agrees to serve a period of obligated
14 service in the agency in an acquisition posi-
15 tion in return for payment of educational
16 assistance as provided in the agreement;
17 and

18 “(iv) meet such other requirements as
19 the head of the agency prescribes.

20 “(C) AGREEMENT.—An agreement between
21 the head of an executive agency and a partici-
22 pant in a scholarship program established under
23 this paragraph shall be in writing, shall be
24 signed by the participant, and shall include the
25 following provisions:

1 “(i) The agreement of the head of the
2 agency to provide the participant with edu-
3 cational assistance for a specified number of
4 school years, not to exceed 4, during which
5 the participant is pursuing a course of edu-
6 cation in a qualifying field of study. The
7 assistance may include payment of tuition,
8 fees, books, laboratory expenses, and a sti-
9 pend.

10 “(ii) The participant’s agreement—

11 “(I) to accept such educational as-
12 sistance,

13 “(II) to maintain enrollment and
14 attendance in the course of education
15 until completed,

16 “(III) while enrolled in such
17 course, to maintain an acceptable level
18 of academic standing (as prescribed by
19 the head of the agency), and

20 “(IV) after completion of the
21 course of education, to serve as a full-
22 time employee in an acquisition posi-
23 tion in the agency for a period of time
24 of one calendar year for each school
25 year or part thereof for which the par-

1 *ticipant was provided a scholarship*
2 *under the program.*

3 “(D) *REPAYMENT.*—(i) *Any person partici-*
4 *pating in a program established under this*
5 *paragraph shall agree to pay to the United*
6 *States the total amount of educational assistance*
7 *provided to the person under the program if the*
8 *person is voluntarily separated from the agency*
9 *or involuntarily separated for cause from the*
10 *agency before the end of the period for which the*
11 *person has agreed to continue in the service of*
12 *the agency in an acquisition position.*

13 “(ii) *If an employee fails to fulfill the agree-*
14 *ment to pay to the Government the total amount*
15 *of educational assistance provided to the person*
16 *under the program, a sum equal to the amount*
17 *of the educational assistance may be recovered by*
18 *the Government from the employee (or the estate*
19 *of the employee) by setoff against accrued pay,*
20 *compensation, amount of retirement credit, or*
21 *other amount due the employee from the Govern-*
22 *ment; and by such other method as is provided*
23 *by law for the recovery of amounts owing to the*
24 *Government.*

1 “(iii) The head of an executive agency may
 2 waive in whole or in part a repayment required
 3 under this paragraph if the head of the agency
 4 determines the recovery would be against equity
 5 and good conscience or would be contrary to the
 6 best interests of the United States.

7 “(E) TERMINATION OF AGREEMENT.—There
 8 shall be no requirement that a position be offered
 9 to a person after such person successfully com-
 10 pletes a course of education required by an
 11 agreement under this paragraph. If no position
 12 is offered, the agreement shall be considered ter-
 13 minated.”.

14 (2) The table of contents for such Act, contained in
 15 section 1(b), is amended by adding at the end the following
 16 new item:

 “Sec. 38. Acquisition workforce.”.

17 (b) ADDITIONAL AMENDMENTS.—Section 6(d)(5) of the
 18 Office of Federal Procurement Policy Act (41 U.S.C. 405),
 19 is amended—

20 (1) in subparagraph (A), by striking out “Gov-
 21 ernment-wide career management programs for a pro-
 22 fessional procurement work force” and inserting in
 23 lieu thereof “the development of a professional acqui-
 24 sition workforce Government-wide”;

25 (2) in subparagraph (B)—

1 (A) by striking out “procurement by the”
2 and inserting in lieu thereof “acquisition by
3 the”; and

4 (B) by striking out “and” at the end of the
5 subparagraph; and

6 (3) by striking out subparagraph (C) and insert-
7 ing in lieu thereof the following:

8 “(C) administer the provisions of section
9 38;

10 “(D) collect data and analyze acquisition
11 workforce data from the Office of Personnel Man-
12 agement, the heads of executive agencies, and,
13 through periodic surveys, from individual em-
14 ployees;

15 “(E) periodically analyze acquisition career
16 fields to identify critical competencies, duties,
17 tasks, and related academic prerequisites, skills,
18 and knowledge;

19 “(F) coordinate and assist agencies in iden-
20 tifying and recruiting highly qualified can-
21 didates for acquisition fields;

22 “(G) develop instructional materials for ac-
23 quisition personnel in coordination with private
24 and public acquisition colleges and training fa-
25 cilities;

1 “(H) evaluate the effectiveness of training
2 and career development programs for acquisition
3 personnel;

4 “(I) promote the establishment and utiliza-
5 tion of academic programs by colleges and uni-
6 versities in acquisition fields;

7 “(J) facilitate, to the extent requested by
8 agencies, interagency intern and training pro-
9 grams; and

10 “(K) perform other career management or
11 research functions as directed by the Adminis-
12 trator.”.

13 **TITLE IV—STREAMLINING OF**
14 **DISPUTE RESOLUTION**
15 **Subtitle A—General Provisions**

16 **SEC. 401. DEFINITIONS.**

17 (a) *IN GENERAL.*—The Office of Federal Procurement
18 Policy Act (41 U.S.C. 401 et seq.) is amended by adding
19 at the end the following:

20 **“TITLE II—DISPUTE**
21 **RESOLUTION**
22 **“Subtitle A—General Provisions**

23 **“SEC. 201. DEFINITIONS.**

24 *“In this title:*

1 “(1) The term ‘Defense Board’ means the De-
2 partment of Defense Board of Contract Appeals estab-
3 lished pursuant to section 8(a) of the Contract Dis-
4 putes Act of 1978 (41 U.S.C. 607).

5 “(2) The term ‘Civilian Board’ means the Civil-
6 ian Board of Contract Appeals established pursuant
7 to section 8(b) of the Contract Disputes Act of 1978
8 (41 U.S.C. 607).

9 “(3) The term ‘Board judge’ means a member of
10 the Defense Board or the Civilian Board, as the case
11 may be.

12 “(4) The term ‘Chairman’ means the Chairman
13 of the Defense Board or the Civilian Board, as the
14 case may be.

15 “(5) The term ‘Board concerned’ means—

16 “(A) the Defense Board with respect to mat-
17 ters within its jurisdiction; and

18 “(B) the Civilian Board with respect to
19 matters within its jurisdiction.

20 “(6) The term ‘executive agency’—

21 “(A) for purposes of contract disputes under
22 section 213—

23 “(i) with respect to contract disputes
24 under the jurisdiction of the Defense Board,
25 means the Department of Defense, the De-

1 *partment of the Army, the Department of*
2 *the Navy, or the Department of the Air*
3 *Force; and*

4 *“(ii) with respect to contract disputes*
5 *under the jurisdiction of the Civilian*
6 *Board, has the meaning given by section*
7 *2(2) of the Contract Disputes Act of 1978*
8 *(41 U.S.C. 601(2)) except that the term does*
9 *not include the Department of Defense, the*
10 *Department of the Army, the Department of*
11 *the Navy, and the Department of the Air*
12 *Force; and*

13 *“(B) for purposes of protests under section*
14 *214—*

15 *“(i) with respect to protests under the*
16 *jurisdiction of the Defense Board, means the*
17 *Department of Defense, the Department of*
18 *the Army, the Department of the Navy, or*
19 *the Department of the Air Force; and*

20 *“(ii) with respect to protests under the*
21 *jurisdiction of the Civilian Board, has the*
22 *meaning given by section 4(1) of this Act*
23 *except that the term does not include the*
24 *Department of Defense, the Department of*

1 *the Army, the Department of the Navy, and*
2 *the Department of the Air Force.*

3 “(7) The term ‘alternative means of dispute reso-
4 *lution’ has the meaning given by section 571(3) of*
5 *title 5, United States Code.*

6 “(8) The term ‘protest’ means a written objection
7 *by an interested party to any of the following:*

8 “(A) A solicitation or other request by an
9 *executive agency for offers for a contract for the*
10 *procurement of property or services.*

11 “(B) The cancellation of such a solicitation
12 *or other request.*

13 “(C) An award or proposed award of such
14 *a contract.*

15 “(D) A termination or cancellation of an
16 *award of such a contract, if the written objection*
17 *contains an allegation that the termination or*
18 *cancellation is based in whole or in part on im-*
19 *proprieties concerning the award of the contract.*

20 “(9) The term ‘interested party’, with respect to
21 *a contract or a solicitation or other request for offers,*
22 *means an actual or prospective bidder or offeror*
23 *whose direct economic interest would be affected by*
24 *the award of the contract or by failure to award the*
25 *contract.*

1 “(10) The term ‘prevailing party’, with respect
 2 to a determination of the Board under section
 3 214(h)(2) that a decision of a contracting officer vio-
 4 lates a statute or regulation, means a party that dem-
 5 onstrated such violation.”.

6 (b) CONFORMING AMENDMENTS.—The Office of Fed-
 7 eral Procurement Policy Act (41 U.S.C. 401 et seq.) is fur-
 8 ther amended—

9 (1) by inserting the following before section 1:

10 **“TITLE I—FEDERAL PROCUREMENT**
 11 **MENT POLICY GENERALLY”;**

12 and

13 (2) in section 4, by striking out “As used in this
 14 Act:” and inserting in lieu thereof “Except as other-
 15 wise specifically provided, as used in this Act.”.

16 **Subtitle B—Establishment of Civil-**
 17 **ian and Defense Boards of Con-**
 18 **tract Appeals**

19 **SEC. 411. ESTABLISHMENT.**

20 Subsections (a) and (b) of section 8 of the Contract
 21 Disputes Act of 1978 (41 U.S.C. 607) are amended to read
 22 as follows:

23 “(a) There is established in the Department of Defense
 24 a board of contract appeals to be known as the Department
 25 of Defense Board of Contract Appeals.

1 “(b) *There is established in the General Services Ad-*
2 *ministration a board of contract appeals to be known as*
3 *the Civilian Board of Contract Appeals.*”.

4 **SEC. 412. MEMBERSHIP.**

5 *The Office of Federal Procurement Policy Act (41*
6 *U.S.C. 401 et seq.), as amended by section 401, is further*
7 *amended by adding at the end the following:*

8 **“SEC. 202. MEMBERSHIP.**

9 “(a) *APPOINTMENT.—(1)(A) The Defense Board shall*
10 *consist of judges appointed by the Chairman, without re-*
11 *gard to political affiliation and solely on the basis of the*
12 *professional qualifications required to perform the duties*
13 *and responsibilities of a Defense Board judge, from a reg-*
14 *ister of applicants maintained by the Defense Board.*

15 “(B) *The Civilian Board shall consist of judges ap-*
16 *pointed by the Chairman, without regard to political affili-*
17 *ation and solely on the basis of the professional qualifica-*
18 *tions required to perform the duties and responsibilities of*
19 *a Civilian Board judge, from a register of applicants main-*
20 *tained by the Civilian Board.*

21 “(2) *The members of the Defense Board and the Civil-*
22 *ian Board shall be selected and appointed to serve in the*
23 *same manner as administrative law judges appointed pur-*
24 *suant to section 3105 of title 5, United States Code, with*
25 *an additional requirement that such members shall have*

1 *had not fewer than five years of experience in public con-*
2 *tract law.*

3 “(3) *Notwithstanding paragraph (2) and subject to*
4 *subsection (b), the following persons shall serve as Board*
5 *judges:*

6 “(A) *For the Defense Board, any full-time mem-*
7 *ber of the Armed Services Board of Contract Appeals*
8 *serving as such on the day before the effective date of*
9 *this title.*

10 “(B) *For the Civilian Board, any full-time mem-*
11 *ber of any agency board of contract appeals other*
12 *than the Armed Services Board of Contract Appeals*
13 *serving as such on the day before the effective date of*
14 *this title.*

15 “(C) *For either the Defense Board or the Civil-*
16 *ian Board, any person serving on the day before the*
17 *date of the enactment of this title in a position at a*
18 *level of assistant general counsel or higher with au-*
19 *thority delegated from the Comptroller General to de-*
20 *cide bid protests under subchapter V of chapter 35 of*
21 *title 31, United States Code.*

22 “(b) *REMOVAL.—Members of the Defense Board and*
23 *the Civilian Board shall be subject to removal in the same*
24 *manner as administrative law judges, as provided in sec-*
25 *tion 7521 of title 5, United States Code.*

1 “(c) *COMPENSATION.*—*Compensation for the Chair-*
 2 *man of the Defense Board and the Chairman of the Civilian*
 3 *Board and all other members of each Board shall be deter-*
 4 *mined under section 5372a of title 5, United States Code.”.*

5 **SEC. 413. CHAIRMAN.**

6 *The Office of Federal Procurement Policy Act (41*
 7 *U.S.C. 401 et seq.), as amended by section 412, is further*
 8 *amended by adding at the end the following:*

9 **“SEC. 203. CHAIRMAN.**

10 “(a) *DESIGNATION.*—(1)(A) *The Chairman of the De-*
 11 *fense Board shall be designated by the Secretary of Defense*
 12 *to serve for a term of five years. The Secretary shall select*
 13 *the Chairman from among sitting judges each of whom has*
 14 *had at least five years of service—*

15 “(i) *as a member of the Armed Services Board*
 16 *of Contract Appeals; or*

17 “(ii) *in a position at a level of assistant general*
 18 *counsel or higher with authority delegated from the*
 19 *Comptroller General to decide bid protests under sub-*
 20 *chapter V of chapter 35 of title 31, United States*
 21 *Code (as in effect on the day before the effective date*
 22 *of this title).*

23 “(B) *The Chairman of the Civilian Board shall be des-*
 24 *ignated by the Administrator of General Services to serve*
 25 *for a term of five years. The Administrator shall select the*

1 *Chairman from among sitting judges each of whom has had*
2 *at least five years of service—*

3 *“(i) as a member of an agency board of contract*
4 *appeals other than the Armed Services Board of Con-*
5 *tract Appeals; or*

6 *“(ii) in a position at a level of assistant general*
7 *counsel or higher with authority delegated from the*
8 *Comptroller General to decide bid protests under sub-*
9 *chapter V of chapter 35 of title 31, United States*
10 *Code (as in effect on the day before the effective date*
11 *of this title).*

12 *“(2) A Chairman of a Board may continue to serve*
13 *after the expiration of the Chairman’s term until a succes-*
14 *sor has taken office. A Chairman may be reappointed any*
15 *number of times.*

16 *“(b) RESPONSIBILITIES.—The Chairman of the De-*
17 *fense Board or the Civilian Board, as the case may be, shall*
18 *be responsible on behalf of the Board for the executive and*
19 *administrative operation of the Board, including functions*
20 *of the Board with respect to the following:*

21 *“(1) The selection, appointment, and fixing of*
22 *the compensation of such personnel, pursuant to part*
23 *III of title 5, United States Code, as the Chairman*
24 *considers necessary or appropriate, including a Clerk*

1 *of the Board, a General Counsel, and clerical and*
2 *legal assistance for Board judges.*

3 “(2) *The supervision of personnel employed by or*
4 *assigned to the Board, and the distribution of work*
5 *among such personnel.*

6 “(3) *The operation of an Office of the Clerk of*
7 *the Board, including the receipt of all filings made*
8 *with the Board, the assignment of cases, and the*
9 *maintenance of all records of the Board.*

10 “(4) *The prescription of such rules and regula-*
11 *tions as the Chairman considers necessary or appro-*
12 *priate for the administration and management of the*
13 *Board.*

14 “(c) *VICE CHAIRMEN.—The Chairman of the Defense*
15 *Board or the Civilian Board, as the case may be, may des-*
16 *ignate up to four other Board judges as Vice Chairmen. The*
17 *Chairman may divide the Board into two divisions, one*
18 *for handling contract disputes and one for handling pro-*
19 *tests, and, if such division is made, shall assign a Vice*
20 *Chairman to head each division. The Vice Chairmen, in*
21 *the order designated by the Chairman, shall act in the place*
22 *and stead of the Chairman during the absence of the Chair-*
23 *man.”.*

1 **SEC. 414. RULEMAKING AUTHORITY.**

2 *The Office of Federal Procurement Policy Act (41*
3 *U.S.C. 401 et seq.), as amended by section 413, is further*
4 *amended by adding at the end the following:*

5 **“SEC. 204. RULEMAKING AUTHORITY.**

6 *“The Chairman of the Defense Board and the Chair-*
7 *man of the Civilian Board shall jointly issue and main-*
8 *tain—*

9 *“(1) such procedural rules and regulations as are*
10 *necessary to the exercise of the functions of the Boards*
11 *under sections 213 and 214; and*

12 *“(2) statements of policy of general applicability*
13 *with respect to such functions.”.*

14 **SEC. 415. AUTHORIZATION OF APPROPRIATIONS.**

15 *The Office of Federal Procurement Policy Act (41*
16 *U.S.C. 401 et seq.), as amended by section 414, is further*
17 *amended by adding at the end the following:*

18 **“SEC. 205. AUTHORIZATION OF APPROPRIATIONS.**

19 *“There are authorized to be appropriated for fiscal*
20 *year 1997 and each succeeding fiscal year such sums as*
21 *may be necessary to carry out the provisions of this title.*
22 *Funds for the activities of each Board shall be separately*
23 *appropriated for such purpose. Funds appropriate pursu-*
24 *ant to this section shall remain available until expended.”.*

1 ***Subtitle C—Functions of Defense***
 2 ***and Civilian Boards of Contract***
 3 ***Appeals***

4 ***SEC. 421. ALTERNATIVE DISPUTE RESOLUTION SERVICES.***

5 *The Office of Federal Procurement Policy Act (41*
 6 *U.S.C. 401 et seq.), as amended by section 415, is further*
 7 *amended by adding at the end the following:*

8 ***“Subtitle B—Functions of the De-***
 9 ***fense and Civilian Boards of***
 10 ***Contract Appeals***

11 ***“SEC. 211. ALTERNATIVE DISPUTE RESOLUTION SERVICES.***

12 *“(a) REQUIREMENT TO PROVIDE SERVICES UPON RE-*
 13 *QUEST.—The Defense Board and the Civilian Board shall*
 14 *each provide alternative means of dispute resolution for any*
 15 *disagreement regarding a contract or prospective contract*
 16 *of an executive agency upon the request of all parties to*
 17 *the disagreement.*

18 *“(b) PERSONNEL QUALIFIED TO ACT.—Each Board*
 19 *judge and each attorney employed by the Board concerned*
 20 *shall be considered to be qualified to act for the purpose*
 21 *of conducting alternative means of dispute resolution under*
 22 *this section.*

23 *“(c) SERVICES TO BE PROVIDED WITHOUT*
 24 *CHARGE.—Any services provided by the Board concerned*

1 or any Board judge or employee pursuant to this section
 2 shall be provided without charge.

3 “(d) *RECUSAL OF CERTAIN PERSONNEL UPON RE-*
 4 *QUEST.*—In the event that a matter which is presented to
 5 the Board concerned for alternative means of dispute resolu-
 6 tion, pursuant to this section, later becomes the subject of
 7 formal proceedings before such Board, any Board judge or
 8 employee who was involved in the alternative means of dis-
 9 pute resolution shall, if requested by any party to the for-
 10 mal proceeding, take no part in that proceeding.”

11 **SEC. 422. ALTERNATIVE DISPUTE RESOLUTION OF DIS-**
 12 **PUTES AND PROTESTS SUBMITTED TO**
 13 **BOARDS.**

14 The Office of Federal Procurement Policy Act (41
 15 U.S.C. 401 et seq.), as amended by section 421, is further
 16 amended by adding at the end the following:

17 **“SEC. 212. ALTERNATIVE DISPUTE RESOLUTION OF DIS-**
 18 **PUTES AND PROTESTS SUBMITTED TO**
 19 **BOARDS.**

20 “With reasonable promptness after the submission to
 21 the Defense Board or the Civilian Board of a contract dis-
 22 pute under section 213 or a bid protest under section 214,
 23 a Board judge to whom the contract dispute or protest is
 24 assigned shall request the parties to meet with a Board
 25 judge, or an attorney employed by the Board concerned, for

1 *the purpose of attempting to resolve the dispute or protest*
 2 *through alternative means of dispute resolution. Formal*
 3 *proceedings in the appeal shall then be suspended until such*
 4 *time as any party or a Board judge to whom the dispute*
 5 *or protest is assigned determines that alternative means of*
 6 *dispute resolution are not appropriate for resolution of the*
 7 *dispute or protest.”.*

8 **SEC. 423. CONTRACT DISPUTES.**

9 *The Office of Federal Procurement Policy Act (41*
 10 *U.S.C. 401 et seq.), as amended by section 422, is further*
 11 *amended by adding at the end the following:*

12 **“SEC. 213. CONTRACT DISPUTES.**

13 *“The Defense Board shall have jurisdiction as provided*
 14 *by section 8(a) of the Contract Disputes Act of 1978 (41*
 15 *U.S.C. 601–613). The Civilian Board shall have jurisdic-*
 16 *tion as provided by section 8(b) of such Act.”.*

17 **SEC. 424. PROTESTS.**

18 *The Office of Federal Procurement Policy Act (41*
 19 *U.S.C. 401 et seq.), as amended by section 423, is further*
 20 *amended by adding at the end the following:*

21 **“SEC. 214. PROTESTS.**

22 *“(a) REVIEW REQUIRED UPON REQUEST.—Upon re-*
 23 *quest of an interested party in connection with any pro-*
 24 *curement conducted by an executive agency, the Defense*
 25 *Board or the Civilian Board, as the case may be, shall re-*

1 view, as provided in this section, any decision by the head
2 of the executive agency alleged to violate a statute or regula-
3 tion. A decision or order of the Board concerned pursuant
4 to this section shall not be subject to interlocutory appeal
5 or review.

6 “(b) *STANDARD OF REVIEW.*—In deciding a protest,
7 the Board concerned may consider all evidence that is rel-
8 evant to the decision under protest. It shall accord a pre-
9 sumption of correctness to the decision under protest. The
10 protester may rebut such presumption by showing, by a pre-
11 ponderance of the evidence, that the decision was arbitrary
12 or capricious or violated a statute or regulation.

13 “(c) *NOTIFICATION.*—Within one day after the receipt
14 of a protest, the Board concerned shall notify the executive
15 agency involved of the protest.

16 “(d) *SUSPENSION OF CONTRACT AWARD.*—(1) Except
17 as provided in paragraph (2) of this subsection, a contract
18 may not be awarded in any procurement after the executive
19 agency has received notice of a protest with respect to such
20 procurement from the Board concerned and while the pro-
21 test is pending.

22 “(2) The head of the procuring activity responsible for
23 award of a contract may authorize the award of the con-
24 tract (notwithstanding a protest of which the executive
25 agency has notice under this section)—

1 “(A) upon a written finding that urgent and
2 compelling circumstances which significantly affect
3 interests of the United States will not permit waiting
4 for the decision of the Board concerned under this sec-
5 tion; and

6 “(B) after the Board concerned is advised of that
7 finding.

8 “(3) A finding may not be made under paragraph
9 (2)(A) of this subsection unless the award of the contract
10 is otherwise likely to occur within 30 days after the making
11 of such finding.

12 “(4) The suspension of the award under paragraph (1)
13 shall not preclude the executive agency concerned from con-
14 tinuing the procurement process up to but not including
15 the award of the contract.

16 “(e) *SUSPENSION OF CONTRACT PERFORMANCE.*—(1)
17 A contractor awarded an executive agency contract may,
18 during the period described in paragraph (4), begin per-
19 formance of the contract and engage in any related activi-
20 ties that result in obligations being incurred by the United
21 States under the contract unless the contracting officer re-
22 sponsible for the award of the contract withholds authoriza-
23 tion to proceed with performance of the contract.

24 “(2) The contracting officer may withhold an author-
25 ization to proceed with performance of the contract during

1 *the period described in paragraph (4) if the contracting of-*
2 *ficer determines in writing that—*

3 *“(A) a protest is likely to be filed; and*

4 *“(B) the immediate performance of the contract*
5 *is not in the best interests of the United States.*

6 *“(3)(A) If the executive agency awarding the contract*
7 *receives notice of a protest in accordance with this section*
8 *during the period described in paragraph (4)—*

9 *“(i) the contracting officer may not authorize*
10 *performance of the contract to begin while the protest*
11 *is pending; or*

12 *“(ii) if authorization for contract performance to*
13 *proceed was not withheld in accordance with para-*
14 *graph (2) before receipt of the notice, the contracting*
15 *officer shall immediately direct the contractor to cease*
16 *performance under the contract and to suspend any*
17 *related activities that may result in additional obli-*
18 *gations being incurred by the United States under*
19 *that contract.*

20 *“(B) Performance and related activities suspended*
21 *pursuant to subparagraph (A)(ii) by reason of a protest*
22 *may not be resumed while the protest is pending.*

23 *“(C) The head of the procuring activity may authorize*
24 *the performance of the contract (notwithstanding a protest*

1 *of which the executive agency has notice under this sec-*
2 *tion)—*

3 “(i) upon a written finding that urgent and
4 compelling circumstances that significantly affect in-
5 terests of the United States will not permit waiting
6 for the decision concerning the protest by the Board
7 concerned; and

8 “(ii) after the Board concerned is notified of that
9 finding.

10 “(4) The period referred to in paragraphs (2) and
11 (3)(A), with respect to a contract, is the period beginning
12 on the date of the contract award and ending on the later
13 of—

14 “(A) the date that is 10 days after the date of
15 the contract award; or

16 “(B) the date that is 5 days after the debriefing
17 date offered to an unsuccessful offeror for any debrief-
18 ing that is requested and, when requested, is required.

19 “(f) The authority of the head of the procuring activity
20 to make findings and to authorize the award and perform-
21 ance of contracts under subsections (d) and (e) of this sec-
22 tion may not be delegated.

23 “(g) PROCEDURES.—

24 “(1) PROCEEDINGS AND DISCOVERY.—The Board
25 concerned shall conduct proceedings and allow such

1 *discovery to the minimum extent necessary for the ex-*
2 *peditious, fair, and cost-effective resolution of the pro-*
3 *test. The Board concerned shall limit discovery to ma-*
4 *terial which is relevant to the grounds of protest or*
5 *to such affirmative defenses as the executive agency*
6 *involved, or any intervenor supporting the agency,*
7 *may raise.*

8 “(2) *PRIORITY.*—The Board concerned shall give
9 *priority to protests filed under this section over con-*
10 *tract disputes and alternative dispute services. Except*
11 *as provided in paragraph (3), the Board concerned*
12 *shall issue its final decision within 65 days after the*
13 *date of the filing of the protest, unless the Chairman*
14 *determines that the specific and unique circumstances*
15 *of the protest require a longer period, in which case*
16 *the Board concerned shall issue such decision within*
17 *the longer period determined by the Chairman. An*
18 *amendment that adds a new ground of protest should*
19 *be resolved, to the maximum extent practicable, with-*
20 *in the time limits established for resolution of the ini-*
21 *tial protest.*

22 “(3) *THRESHOLD.*—(A) *Except as provided in*
23 *subparagraph (B), any protest in which the antici-*
24 *pated value of the contract award that will result*
25 *from the protested procurement, as estimated by the*

1 *executive agency involved, is less than \$20,000,000*
2 *shall be considered under simplified rules of proce-*
3 *dure. Such simplified rules shall provide that discov-*
4 *ery in such protests shall be in writing only. Such*
5 *protests shall be decided by a single Board judge. The*
6 *Board concerned shall issue its final decision in each*
7 *such protest within 40 days after the date of the filing*
8 *of the protest, unless the Chairman determines that*
9 *the specific and unique circumstances of the protest*
10 *require a longer period, in which case the Board con-*
11 *cerned shall issue such decision within the longer pe-*
12 *riod determined by the Chairman.*

13 *“(B) If the Chairman of the Board concerned de-*
14 *termines that special and unique circumstances of a*
15 *protest that would otherwise qualify for the simplified*
16 *rules described in subparagraph (A), including the*
17 *complexity of a protest, requires the use of full proce-*
18 *dures as described in paragraphs (1) and (2), the*
19 *Chairman shall use such procedures in lieu of the*
20 *simplified rules described in subparagraph (A).*

21 *“(4) CALCULATION OF TIME FOR ADR.—In cal-*
22 *culating time for purposes of paragraph (2) or (3) of*
23 *this subsection, any days during which proceedings*
24 *are suspended for the purpose of attempting to resolve*

1 *the protest by alternative means of dispute resolution,*
2 *up to a maximum of 20 days, shall not be counted.*

3 “(5) *DISMISSAL OF FRIVOLOUS PROTESTS.—The*
4 *Board concerned may dismiss a protest that the*
5 *Board concerned determines—*

6 “(A) *is frivolous,*

7 “(B) *has been brought or pursued in bad*
8 *faith; or*

9 “(C) *does not state on its face a valid basis*
10 *for protest.*

11 “(6) *PAYMENT OF COSTS FOR FRIVOLOUS PRO-*
12 *TESTS.—(A) If the Board concerned expressly finds*
13 *that a protest or a portion of a protest is frivolous*
14 *or has been brought or pursued in bad faith, the*
15 *Board concerned shall declare that the protester or*
16 *other interested party who joins the protest is liable*
17 *to the United States for payment of the costs described*
18 *in subparagraph (B) unless—*

19 “(i) *special circumstances would make such*
20 *payment unjust; or*

21 “(ii) *the protester obtains documents or*
22 *other information after the protest is filed with*
23 *the Board concerned that establishes that the*
24 *protest or a portion of the protest is frivolous or*
25 *has been brought or pursued in bad faith, and*

1 the protester then promptly withdraws the pro-
2 test or portion of the protest.

3 “(B) The costs referred to in subparagraph (A)
4 are all of the costs incurred by the United States of
5 reviewing the protest, or of reviewing that portion of
6 the protest for which the finding is made, including
7 the fees and other expenses (as defined in section
8 2412(d)(2)(A) of title 28, United States Code) in-
9 curred by the United States in defending the protest.

10 “(h) DECISIONS AND CORRECTIVE ACTIONS ON PRO-
11 TESTS.—(1) In making a decision on protests filed under
12 this section, the Board concerned shall accord due weight
13 to the goals of economic and efficient procurement, and
14 shall take due account of the rule of prejudicial error.

15 “(2) If the Board concerned determines that a decision
16 of the head of the executive agency violates a statute or regu-
17 lation, the Board concerned may order the agency (or its
18 head) to take such corrective action as the Board concerned
19 considers appropriate. Corrective action includes requiring
20 that the executive agency—

21 “(A) refrain from exercising any of its options
22 under the contract;

23 “(B) recompete the contract immediately;

24 “(C) issue a new solicitation;

25 “(D) terminate the contract;

1 “(E) award a contract consistent with the re-
2 quirements of such statute and regulation;

3 “(F) implement any combination of require-
4 ments under subparagraphs (A), (B), (C), (D), and
5 (E); or

6 “(G) implement such other actions as the Board
7 concerned determines necessary.

8 “(3) If the Board concerned orders corrective action
9 after the contract award, the affected contract shall be pre-
10 sumed valid as to all goods or services delivered and accept-
11 ed under the contract before the corrective action was or-
12 dered.

13 “(4) Any agreement that provides for the dismissal of
14 a protest and involves a direct or indirect expenditure of
15 appropriated funds shall be submitted to the Board con-
16 cerned and shall be made a part of the public record (subject
17 to any protective order considered appropriate by the Board
18 concerned) before dismissal of the protest.

19 “(i) *AUTHORITY TO DECLARE ENTITLEMENT TO*
20 *COSTS.—(1)(A) Whenever the Board concerned determines*
21 *that a decision of a contracting officer violates a statute*
22 *or regulation, it may, in accordance with section 1304 of*
23 *title 31, United States Code, further declare an appropriate*
24 *prevailing party to be entitled to the costs of—*

1 “(i) filing and pursuing the protest, including
2 reasonable attorneys’ fees and consultant and expert
3 witness fees, and

4 “(ii) bid and proposal preparation.

5 “(B) No party (other than a small business concern
6 (within the meaning of section 3(a) of the Small Business
7 Act)) may be declared entitled under this paragraph to costs
8 for—

9 “(i) consultant and expert witness fees that ex-
10 ceed the highest rate of compensation for expert wit-
11 nesses paid by the Federal Government, or

12 “(ii) attorneys’ fees that exceed \$150 per hour
13 unless the Board concerned, on a case by case basis,
14 determines that an increase in the cost of living or a
15 special factor, such as the limited availability of
16 qualified attorneys for the proceedings involved, justi-
17 fies a higher fee.

18 “(2) Payment of amounts due from an agency under
19 paragraph (1) or under the terms of a settlement agreement
20 under subsection (h)(4) shall be made from the appropria-
21 tion made by section 1304 of title 31, United States Code,
22 for the payment of judgments. The executive agency con-
23 cerned shall reimburse that appropriation account out of
24 funds available for the procurement.

1 “(j) *APPEALS*.—A final decision of the Board con-
 2 cerned may be appealed as set forth in section 8(g)(1) of
 3 the Contract Disputes Act of 1978 by the head of the execu-
 4 tive agency concerned and by any interested party, includ-
 5 ing interested parties who intervene in any protest filed
 6 under this section.

7 “(k) *ADDITIONAL RELIEF*.—Nothing contained in this
 8 section shall affect the power of the Board concerned to
 9 order any additional relief which it is authorized to provide
 10 under any statute or regulation.

11 “(l) *NONEXCLUSIVITY OF REMEDIES*.—Nothing con-
 12 tained in this section shall affect the right of any interested
 13 party to file a protest with the contracting agency or to
 14 file an action in the United States Court of Federal Claims
 15 or in a United States district court.”.

16 **SEC. 425. APPLICABILITY TO CERTAIN CONTRACTS.**

17 The Office of Federal Procurement Policy Act (41
 18 U.S.C. 401 et seq.), as amended by section 424, is further
 19 amended by adding at the end the following:

20 **“SEC. 215. APPLICABILITY TO CERTAIN CONTRACTS.**

21 “(a) *CONTRACTS AT OR BELOW THE SIMPLIFIED AC-*
 22 *QUISITION THRESHOLD*.—Notwithstanding section 33 of
 23 this Act, the authority conferred on the Defense Board and
 24 the Civilian Board by this title is applicable to contracts

1 *in amounts not greater than the simplified acquisition*
2 *threshold.*

3 “(b) *CONTRACTS FOR COMMERCIAL ITEMS.*—Notwith-
4 *standing section 34 of this Act, the authority conferred on*
5 *the Defense Board and the Civilian Board by this title is*
6 *applicable to contracts for the procurement of commercial*
7 *items.”.*

8 ***Subtitle D—Repeal of Other Stat-***
9 ***utes Authorizing Administrative***
10 ***Protests***

11 ***SEC. 431. REPEALS.***

12 (a) *GSBCA PROVISIONS.*—Subsection (f) of the Brooks
13 *Automatic Data Processing Act (section 111 of the Federal*
14 *Property and Administrative Services Act of 1949; 40*
15 *U.S.C. 759) is repealed.*

16 (b) *GAO PROVISIONS.*—(1) *Subchapter V of chapter*
17 *35 of title 31, United States Code (31 U.S.C. 3551–3556)*
18 *is repealed.*

19 (2) *The analysis for chapter 35 of such title is amended*
20 *by striking out the items relating to sections 3551 through*
21 *3556 and the heading for subchapter V.*

1 ***Subtitle E—Transfers and Transi-***
2 ***tional, Savings, and Conforming***
3 ***Provisions***

4 ***SEC. 441. TRANSFER AND ALLOCATION OF APPROPRIA-***
5 ***TIONS AND PERSONNEL.***

6 (a) *TRANSFERS.*—

7 (1) *ARMED SERVICES BOARD OF CONTRACT AP-*
8 *PEALS.*—*The personnel employed in connection with,*
9 *and the assets, liabilities, contracts, property, records,*
10 *and unexpended balance of appropriations, authoriza-*
11 *tions, allocations, and other funds employed, held,*
12 *used, arising from, available to, or to be made avail-*
13 *able in connection with the functions vested by law in*
14 *the Armed Services Board of Contract Appeals estab-*
15 *lished pursuant to section 8 of the Contract Disputes*
16 *Act of 1978 (41 U.S.C. 607) (as in effect on the day*
17 *before the effective date of this Act), shall be trans-*
18 *ferred to the Department of Defense Board of Contract*
19 *Appeals for appropriate allocation by the Chairman*
20 *of that Board.*

21 (2) *OTHER BOARDS OF CONTRACTS APPEALS.*—
22 *The personnel employed in connection with, and the*
23 *assets, liabilities, contracts, property, records, and un-*
24 *expended balance of appropriations, authorizations,*
25 *allocations, and other funds employed, held, used,*

1 arising from, available to, or to be made available in
2 connection with the functions vested by law in the
3 boards of contract appeals established pursuant to sec-
4 tion 8 of the Contract Disputes Act of 1978 (41
5 U.S.C. 607) other than the Armed Services Board of
6 Contract Appeals (as in effect on the day before the
7 effective date of this Act), shall be transferred to the
8 Civilian Board of Contract Appeals for appropriate
9 allocation by the Chairman of that Board.

10 (3) COMPTROLLER GENERAL.—(A) One-third (as
11 determined by the Comptroller General) of the person-
12 nel employed in connection with, and one-third (as
13 determined by the Comptroller General) of the assets,
14 liabilities, contracts, property, records, and unex-
15 pended balance of appropriations, authorizations, al-
16 locations, and other funds employed, held, used, aris-
17 ing from, available to, or to be made available in con-
18 nection with the functions vested by law in the Comp-
19 troller General pursuant to subchapter V of chapter
20 35 of title 31, United States Code (as in effect on the
21 day before the effective date of this Act), shall be
22 transferred to the Civilian Board of Contract Appeals
23 for appropriate allocation by the Chairman of that
24 Board.

1 (B) *Two-thirds (as determined by the Comptrol-*
2 *ler General) of the personnel employed in connection*
3 *with, and two-thirds (as determined by the Comptrol-*
4 *ler General) of the assets, liabilities, contracts, prop-*
5 *erty, records, and unexpended balance of appropria-*
6 *tions, authorizations, allocations, and other funds em-*
7 *ployed, held, used, arising from, available to, or to be*
8 *made available in connection with the functions vest-*
9 *ed by law in the Comptroller General pursuant to*
10 *subchapter V of chapter 35 of title 31, United States*
11 *Code (as in effect on the day before the effective date*
12 *of this Act), shall be transferred to the Department of*
13 *Defense Board of Contract Appeals for appropriate*
14 *allocation by the Chairman of that Board.*

15 (b) *EFFECT ON PERSONNEL.—Personnel transferred*
16 *pursuant to this title shall not be separated or reduced in*
17 *compensation for one year after such transfer, except for*
18 *cause.*

19 (c) *REGULATIONS.—(1) The Department of Defense*
20 *Board of Contract Appeals and the Civilian Board of Con-*
21 *tract Appeals shall each prescribe regulations for the release*
22 *of competing employees in a reduction in force that gives*
23 *due effect to—*

24 (A) *efficiency or performance ratings;*

25 (B) *military preference; and*

1 (C) *tenure of employment.*

2 (2) *In prescribing the regulations, the Board concerned*
3 *shall provide for military preference in the same manner*
4 *as set forth in subchapter I of chapter 35 of title 5, United*
5 *States Code.*

6 **SEC. 442. TERMINATIONS AND SAVINGS PROVISIONS.**

7 (a) *TERMINATION OF BOARDS OF CONTRACT AP-*
8 *PEALS.—On the effective date of this title, the boards of con-*
9 *tract appeals established pursuant to section 8 of the Con-*
10 *tract Disputes Act of 1978 (41 U.S.C. 607) (as in effect*
11 *on the day before the effective date of this Act) shall termi-*
12 *nate.*

13 (b) *SAVINGS PROVISION FOR CONTRACT DISPUTE*
14 *MATTERS PENDING BEFORE BOARDS.—(1) The provisions*
15 *of this title shall not affect any proceedings (other than bid*
16 *protests pending before the board of contract appeals of the*
17 *General Services Administration) pending on the effective*
18 *date of this Act before any board of contract appeals de-*
19 *scribed in subsection (a).*

20 (2) *In the case of any such proceedings pending before*
21 *the Armed Services Board of Contract Appeals, the proceed-*
22 *ings shall be continued by the Department of Defense Board*
23 *of Contract Appeals, and orders which were issued in any*
24 *such proceeding by the Armed Services Board of Contract*
25 *Appeals shall continue in effect until modified, terminated,*

1 *superseded, or revoked by the Department of Defense Board*
2 *of Contract Appeals, by a court of competent jurisdiction,*
3 *or by operation of law.*

4 (3) *In the case of any such proceedings pending before*
5 *an agency board of contract appeals other than the Armed*
6 *Services Board of Contract Appeals, the proceedings shall*
7 *be continued by the Civilian Board of Contract Appeals,*
8 *and orders which were issued in any such proceeding by*
9 *the agency board shall continue in effect until modified, ter-*
10 *minated, superseded, or revoked by the Civilian Board of*
11 *Contract Appeals, by a court of competent jurisdiction, or*
12 *by operation of law.*

13 (c) *BID PROTEST TRANSITION PROVISIONS.—(1) No*
14 *protest may be submitted to the Comptroller General pursu-*
15 *ant to section 3553(a) of title 31, United States Code, or*
16 *to the board of contract appeals for the General Services*
17 *Administration pursuant to the Brooks Automatic Data*
18 *Processing Act (40 U.S.C. 759) on or after the effective date*
19 *of this Act.*

20 (2) *In the case of bid protest proceedings pending be-*
21 *fore the board of contract appeals of the General Services*
22 *Administration on the effective date of this Act, the proceed-*
23 *ings shall be continued by the Civilian Board of Contract*
24 *Appeals. The provisions repealed by section 431(a) shall*
25 *continue to apply to such proceedings until the Civilian*

1 *Board of Contract Appeals determines such proceedings*
 2 *have been completed.*

3 (3) *The provisions repealed by section 431(b) shall con-*
 4 *tinue to apply to proceedings pending on the effective date*
 5 *of this title before the Comptroller General pursuant to those*
 6 *provisions, until the Comptroller General determines such*
 7 *proceedings have been completed.*

8 ***SEC. 443. CONTRACT DISPUTES AUTHORITY OF BOARDS.***

9 (a) *Section 2 of the Contract Disputes Act of 1978 (41*
 10 *U.S.C. 601) is amended—*

11 (1) *by amending paragraph (6) to read as fol-*
 12 *lows:*

13 “(6) *the term ‘Defense Board’ means the Depart-*
 14 *ment of Defense Board of Contract Appeals estab-*
 15 *lished under section 8(a) of this Act;”;*

16 (2) *by redesignating paragraph (7) as para-*
 17 *graph (8); and*

18 (3) *by inserting after paragraph (6) the follow-*
 19 *ing new paragraph (7):*

20 “(7) *the term ‘Civilian Board’ means the Civil-*
 21 *ian Board of Contract Appeals established under sec-*
 22 *tion 8(b) of this Act; and”.*

23 (b) *Section 6(c)(6) of the Contract Disputes Act of*
 24 *1978 (41 U.S.C. 605(c)(6)) is amended—*

1 (1) by striking out “court or an agency board of
2 contract appeals” and inserting in lieu thereof “court,
3 the Defense Board, or the Civilian Board”;

4 (2) by striking out “an agency board of contract
5 appeals” in the third sentence and inserting in lieu
6 thereof “the Defense Board or the Civilian Board”;
7 and

8 (3) by striking out “agency board” and inserting
9 in lieu thereof “the Board concerned”.

10 (c) Section 7 of the Contract Disputes Act of 1978 (41
11 U.S.C. 606) is amended by striking out “an agency board
12 of contract appeals” and inserting in lieu thereof “the De-
13 fense Board or the Civilian Board”.

14 (d) Section 8 of the Contract Disputes Act of 1978 (41
15 U.S.C. 607), as amended by section 411, is further amend-
16 ed—

17 (1) by amending the heading to read as follows:
18 “DEFENSE AND CIVILIAN BOARDS OF CONTRACT APPEALS”;

19 (2) by striking out subsection (c);

20 (3) in subsection (d)—

21 (A) by striking out the first sentence and
22 inserting in lieu thereof the following:

23 “The Defense Board shall have jurisdiction to decide any
24 appeal from a decision of a contracting officer of the De-
25 partment of Defense, the Department of the Army, the De-
26 partment of the Navy, or the Department of the Air Force

1 *relative to a contract made by that department. The Civil-*
 2 *ian Board shall have jurisdiction to decide any appeal from*
 3 *a decision of a contracting officer of any executive agency*
 4 *(other than the Department of Defense or the Department*
 5 *of the Army, the Navy, or the Air Force) relative to a con-*
 6 *tract made by that agency.”; and*

7 *(B) in the second sentence, by striking out*
 8 *“the agency board” and inserting in lieu thereof*
 9 *“the Board concerned”;*

10 *(4) in subsection (e), by striking out “An agency*
 11 *board shall provide” and inserting in lieu thereof*
 12 *“The Defense Board and the Civilian Board shall*
 13 *each provide,”;*

14 *(5) in subsection (f), by striking out “each agen-*
 15 *cy board” and inserting in lieu thereof “the Defense*
 16 *Board and the Civilian Board”;*

17 *(6) in subsection (g)—*

18 *(A) in the first sentence of paragraph (1),*
 19 *by striking out “an agency board of contract ap-*
 20 *peals” and inserting in lieu thereof “the Defense*
 21 *Board or the Civilian Board, as the case may*
 22 *be,”;*

23 *(B) by striking out paragraph (2); and*

24 *(C) by redesignating paragraph (3) as*
 25 *paragraph (2); and*

1 (7) by striking out subsections (h) and (i).

2 (e) Section 9 of the Contract Disputes Act of 1978 (41
3 U.S.C. 608) is amended—

4 (1) in subsection (a), by striking out “each agen-
5 cy board” and inserting in lieu thereof “the Defense
6 Board and the Civilian Board”; and

7 (2) in subsection (b), by striking out “the agency
8 board” and inserting in lieu thereof “the Board con-
9 cerned”.

10 (f) Section 10 of the Contract Disputes Act of 1978
11 (41 U.S.C. 609) is amended—

12 (1) in subsection (a)—

13 (A) in the first sentence of paragraph (1)—

14 (i) by striking out “Except as provided
15 in paragraph (2), and in” and inserting in
16 lieu thereof “In”; and

17 (ii) by striking out “an agency board”
18 and inserting in lieu thereof “the Defense
19 Board or the Civilian Board”;

20 (B) by striking out paragraph (2); and

21 (C) by redesignating paragraph (3) as
22 paragraph (2), and in that paragraph by strik-
23 ing out “or (2)”;

24 (2) in subsection (b)—

1 (A) by striking out “any agency board” and
2 inserting in lieu thereof “the Defense Board or
3 the Civilian Board”; and

4 (B) by striking out “the agency board” and
5 inserting in lieu thereof “the Board concerned”;
6 (3) in subsection (c)—

7 (A) by striking out “an agency board” and
8 inserting in lieu of each “the Defense Board or
9 the Civilian Board”; and

10 (B) by striking out “the agency board” and
11 inserting in lieu thereof “the Board concerned”;
12 and

13 (4) in subsection (d)—

14 (A) by striking out “one or more agency
15 boards” and inserting in lieu thereof “the De-
16 fense Board or the Civilian Board (or both)”;
17 and

18 (B) by striking out “or among the agency
19 boards involved” and inserting in lieu thereof
20 “one or both of the Boards”.

21 (g) Section 11 of the Contract Disputes Act of 1978
22 (41 U.S.C. 610) is amended—

23 (1) in the first sentence, by striking out “an
24 agency board of contract appeals” and inserting in

1 *lieu thereof “the Defense Board or the Civilian*
2 *Board”;* and

3 *(2) in the second sentence, by striking out “the*
4 *agency board through the Attorney General; or upon*
5 *application by the board of contract appeals of the*
6 *Tennessee Valley Authority” and inserting in lieu*
7 *thereof “the Defense Board or the Civilian Board”.*

8 *(h) Section 13 of the Contract Disputes Act of 1978*
9 *(41 U.S.C. 612) is amended—*

10 *(1) in subsection (b), by striking out “an agency*
11 *board of contract appeals” and inserting in lieu*
12 *thereof “the Defense Board or the Civilian Board”;*
13 *and*

14 *(2) in subsection (d)(2), by striking out “by the*
15 *board of contract appeals for” and inserting in lieu*
16 *thereof “by the Defense Board or the Civilian Board*
17 *from”.*

18 **SEC. 444. REFERENCES TO AGENCY BOARDS OF CONTRACT**
19 **APPEALS.**

20 *(a) DEFENSE BOARD.—Any reference to the Armed*
21 *Services Board of Contract Appeals in any provision of law*
22 *or in any rule, regulation, or other paper of the United*
23 *States shall be treated as referring to the Department of*
24 *Defense Board of Contract Appeals.*

1 (b) *CIVILIAN BOARD*.—Any reference to an agency
2 board of contract appeals other than the Armed Services
3 Board of Contract Appeals in any provision of law or in
4 any rule, regulation, or other paper of the United States
5 shall be treated as referring to the Civilian Board of Con-
6 tract Appeals.

7 **SEC. 445. CONFORMING AMENDMENTS.**

8 (a) *TITLE 5*.—Section 5372a of title 5, United States
9 Code, is amended—

10 (1) in subsection (a)(1), by striking out “an
11 agency board of contract appeals appointed under
12 section 8 of the Contract Disputes Act of 1978” and
13 inserting in lieu thereof “the Department of Defense
14 Board of Contract Appeals or the Civilian Board of
15 Contract Appeals appointed under section 202 of the
16 Office of Federal Procurement Policy Act”; and

17 (2) in subsection (a)(2), by striking out “an
18 agency board of contract appeals” and inserting in
19 lieu thereof “the Department of Defense Board of Con-
20 tract Appeals or the Civilian Board of Contract Ap-
21 peals”.

22 (b) *TITLE 10*.—(1) Section 2305(e) of title 10, United
23 States Code, is amended—

24 (A) in paragraph (1), by striking out “sub-
25 chapter V of chapter 35 of title 31” and inserting in

1 *lieu thereof “title II of the Office of Federal Procure-*
2 *ment Policy Act”;* and

3 *(B) by striking out paragraph (3).*

4 *(2) Section 2305(f) of such title is amended—*

5 *(A) in paragraph (1), by striking out “subpara-*
6 *graphs (A) through (F) of subsection (b)(1) of section*
7 *3554 of title 31” and inserting in lieu thereof “section*
8 *214(h)(2) of the Office of Federal Procurement Policy*
9 *Act”;* and

10 *(B) in paragraph (2), by striking out “para-*
11 *graph (1) of section 3554(c) of title 31 within the lim-*
12 *its referred to in paragraph (2)” and inserting in*
13 *lieu thereof “subparagraph (A) of section 214(i)(1) of*
14 *the Office of Federal Procurement Policy Act within*
15 *the limits referred to in subparagraph (B)”.*

16 *(c) FEDERAL PROPERTY AND ADMINISTRATIVE SERV-*
17 *ICES ACT OF 1949.—(1) Section 303B(j) (as redesignated*
18 *by section 104(b)(2)) of the Federal Property and Adminis-*
19 *trative Services Act of 1949 (41 U.S.C. 253b(h)) is amend-*
20 *ed—*

21 *(A) in paragraph (1), by striking out “sub-*
22 *chapter V of chapter 35 of title 31, United States*
23 *Code” and inserting in lieu thereof “title II of the Of-*
24 *fice of Federal Procurement Policy Act”;* and

25 *(B) by striking out paragraph (3).*

1 (2) Section 303B(k) (as redesignated by section
2 104(b)(2)) of such Act (41 U.S.C. 253b(i)) is amended—

3 (A) in paragraph (1), by striking out “in sub-
4 paragraphs (A) through (F) of subsection (b)(1) of
5 section 3554 of title 31, United States Code” and in-
6 serting in lieu thereof “section 214(h)(2) of the Office
7 of Federal Procurement Policy Act”; and

8 (B) in paragraph (2), by striking out “para-
9 graph (1) of section 3554(c) of such title within the
10 limits referred to in paragraph (2)” and inserting in
11 lieu thereof “subparagraph (A) of section 214(i)(1) of
12 the Office of Federal Procurement Policy Act within
13 the limits referred to in subparagraph (B)”.

14 (d) OFFICE OF FEDERAL PROCUREMENT POLICY
15 ACT.—The table of contents for the Office of Federal Pro-
16 curement Policy Act (contained in section 1(b)) is amend-
17 ed—

18 (1) by inserting the following before the item re-
19 lating to section 1:

“TITLE I—FEDERAL PROCUREMENT POLICY GENERALLY”;

20 and

21 (2) by adding at the end the following:

“TITLE II—DISPUTE RESOLUTION

“SUBTITLE A—GENERAL PROVISIONS

“Sec. 201. Definitions.

“Sec. 202. Membership.

“Sec. 203. Chairman.

“Sec. 204. Rulemaking authority.

“Sec. 205. Authorization of appropriations.

*“SUBTITLE B—FUNCTIONS OF THE DEFENSE AND CIVILIAN BOARDS OF
CONTRACT APPEALS*

“Sec. 211. Alternative dispute resolution services.

*“Sec. 212. Alternative dispute resolution of disputes and protests submitted to
Boards.*

“Sec. 213. Contract disputes.

“Sec. 214. Protests.

“Sec. 215. Applicability to certain contracts.”.

1 *Subtitle F—Effective Date; Interim*
2 *Appointment and Rules*

3 *SEC. 451. EFFECTIVE DATE.*

4 *This title and the amendments made by this title shall*
5 *take effect on October 1, 1996.*

6 *SEC. 452. INTERIM APPOINTMENT.*

7 *(a) DEFENSE BOARD.—The judge serving as chairman*
8 *of the Armed Services Board of Contract Appeals on the*
9 *date of the enactment of this Act shall serve as Chairman*
10 *of the Department of Defense Board of Contract Appeals*
11 *during the two-year period beginning on the effective date*
12 *of this title, unless such individual resigns such position*
13 *or the position otherwise becomes vacant before the expira-*
14 *tion of such period. The authority vested in the Secretary*
15 *of Defense by section 203(a) of the Office of Federal Procure-*
16 *ment Policy Act (as added by section 413) shall take effect*
17 *upon the expiration of such two-year period or on the date*
18 *such position is vacated, whichever occurs earlier.*

19 *(b) CIVILIAN BOARD.—The judge serving as chairman*
20 *of the board of contract appeals of the General Services Ad-*

1 *ministration on the date of the enactment of this Act shall*
2 *serve as Chairman of the Civilian Board of Contract Ap-*
3 *peals during the two-year period beginning on the effective*
4 *date of this title, unless such individual resigns such posi-*
5 *tion or the position otherwise becomes vacant before the ex-*
6 *piration of such period. The authority vested in the Admin-*
7 *istrator of General Services by section 203(a) of the Office*
8 *of Federal Procurement Policy Act (as added by section*
9 *413) shall take effect upon the expiration of such two-year*
10 *period or on the date such position is vacated, whichever*
11 *occurs earlier.*

12 **SEC. 453. INTERIM RULES.**

13 *(a) RULES OF PROCEDURE.—Until such date as rules*
14 *of procedure are promulgated pursuant to section 204 of*
15 *the Office of Federal Procurement Policy Act (as added by*
16 *section 414)—*

17 *(1) for protests, the rules of procedure of the*
18 *board of contract appeals of the General Services Ad-*
19 *ministration, as in effect on the day before the effec-*
20 *tive date of this Act, shall be the rules of procedure*
21 *for both the Department of Defense Board of Contract*
22 *Appeals and the Civilian Board of Contract Appeals;*
23 *and*

24 *(2) for contract disputes—*

1 (A) the rules of procedure of the board of
2 contract appeals of the General Services Admin-
3 istration, as in effect on the day before the effec-
4 tive date of this Act, shall be the rules of proce-
5 dure for the Civilian Board of Contract Appeals;
6 and

7 (B) the rules of procedure of the Armed
8 Services Board of Contract Appeals, as in effect
9 on the day before the effective date of this Act,
10 shall be the rules of procedure for the Depart-
11 ment of Defense Board of Contract Appeals.

12 (b) RULES REGARDING BOARD JUDGES.—(1) Until
13 such date as the Department of Defense Board of Contract
14 Appeals (in this paragraph referred to as the “Defense
15 Board”) promulgates rules governing the establishment and
16 maintenance of a register of eligible applicants and the se-
17 lection of Board judges, the rules of the Armed Services
18 Board of Contract Appeals governing the establishment and
19 maintenance of a register of eligible applicants and the se-
20 lection of board members (as in effect on the day before the
21 effective date of this Act) shall be the rules of the Defense
22 Board governing the establishment and maintenance of a
23 register of eligible applicants and the selection of Board
24 judges, except that any provisions of the rules of the Armed
25 Services Board of Contract Appeals that authorize any in-

1 *dividual other than the chairman of such board to select*
 2 *a Defense Board judge shall have no effect.*

3 (2) *Until such date as the Civilian Board of Contract*
 4 *Appeals (in this paragraph referred to as the “Civilian*
 5 *Board”)* *promulgates rules governing the establishment and*
 6 *maintenance of a register of eligible applicants and the se-*
 7 *lection of Board judges, the rules of the board of contract*
 8 *appeals of the General Services Administration governing*
 9 *the establishment and maintenance of a register of eligible*
 10 *applicants and the selection of board members (as in effect*
 11 *on the day before the effective date of this Act) shall be the*
 12 *rules of the Civilian Board governing the establishment and*
 13 *maintenance of a register of eligible applicants and the se-*
 14 *lection of Board judges, except that any provisions of the*
 15 *rules of the board of contract appeals of the General Services*
 16 *Administration that authorize any individual other than*
 17 *the chairman of such board to select a Civilian Board judge*
 18 *shall have no effect.*

19 ***TITLE V—EFFECTIVE DATES AND*** 20 ***IMPLEMENTATION***

21 ***SEC. 501. EFFECTIVE DATE AND APPLICABILITY.***

22 (a) *EFFECTIVE DATE.*—*Except as otherwise provided*
 23 *in this title, this title and the amendments made by this*
 24 *title shall take effect on the date of the enactment of this*
 25 *Act.*

1 (b) *APPLICABILITY OF AMENDMENTS.*—(1) *An amend-*
2 *ment made by this title shall apply, in the manner pre-*
3 *scribed in the final regulations promulgated pursuant to*
4 *section 502 to implement such amendment, with respect to*
5 *any solicitation that is issued, any unsolicited proposal*
6 *that is received, and any contract entered into pursuant*
7 *to such a solicitation or proposal, on or after the date de-*
8 *scribed in paragraph (3).*

9 (2) *An amendment made by this title shall also apply,*
10 *to the extent and in the manner prescribed in the final regu-*
11 *lations promulgated pursuant to section 502 to implement*
12 *such amendment, with respect to any matter related to—*

13 (A) *a contract that is in effect on the date de-*
14 *scribed in paragraph (3);*

15 (B) *an offer under consideration on the date de-*
16 *scribed in paragraph (3); or*

17 (C) *any other proceeding or action that is ongo-*
18 *ing on the date described in paragraph (3).*

19 (3) *The date referred to in paragraphs (1) and (2) is*
20 *the date specified in such final regulations. The date so*
21 *specified shall be October 1, 1996, or any earlier date that*
22 *is not within 30 days after the date on which such final*
23 *regulations are published.*

1 **SEC. 502. IMPLEMENTING REGULATIONS.**

2 (a) *PROPOSED REVISIONS.*—Proposed revisions to the
3 Federal Acquisition Regulation and such other proposed
4 regulations (or revisions to existing regulations) as may be
5 necessary to implement this title shall be published in the
6 Federal Register not later than 210 days after the date of
7 the enactment of this Act.

8 (b) *PUBLIC COMMENT.*—The proposed regulations de-
9 scribed in subsection (a) shall be made available for public
10 comment for a period of not less than 60 days.

11 (c) *FINAL REGULATIONS.*—Final regulations shall be
12 published in the Federal Register not later than 330 days
13 after the date of enactment of this Act.

14 (d) *MODIFICATIONS.*—Final regulations promulgated
15 pursuant to this section to implement an amendment made
16 by this title may provide for modification of an existing
17 contract without consideration upon the request of the con-
18 tractor.

19 (e) *SAVINGS PROVISIONS.*—(1) Nothing in this title
20 shall be construed to affect the validity of any action taken
21 or any contract entered into before the date specified in the
22 regulations pursuant to section 501(b)(3) except to the ex-
23 tent and in the manner prescribed in such regulations.

24 (2) Except as specifically provided in this title, noth-
25 ing in this title shall be construed to require the renegoti-

1 *ation or modification of contracts in existence on the date*
 2 *of the enactment of this Act.*

3 *(3) Except as otherwise provided in this title, a law*
 4 *amended by this title shall continue to be applied according*
 5 *to the provisions thereof as such law was in effect on the*
 6 *day before the date of the enactment of this Act until—*

7 *(A) the date specified in final regulations imple-*
 8 *menting the amendment of that law (as promulgated*
 9 *pursuant to this section); or*

10 *(B) if no such date is specified in regulations,*
 11 *October 1, 1996.*

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HR 1670 RIH—2

HR 1670 RIH—3

HR 1670 RIH—4

HR 1670 RIH—5

HR 1670 RIH—6

HR 1670 RIH—7

HR 1670 RIH—8

HR 1670 RIH—9

HR 1670 RIH—10

HR 1670 RIH—11